TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 94.

THE HUGULEY MANUFACTURING COMPANY, WILLIAM T. HUGULEY, AND THE ALABAMA AND GEORGIA MANUFACTURING COMPANY, APPELLANTS,

vs.

THE GALETON COTTON MILLS, J. J. ROBINSON, TRUSTEE, AND L. LANIER.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

FILED JUNE 25, 1900.

(17,813.)

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a *Caption.*

UNITED STATES OF AMERICA,
Fifth Judicial Circuit.

Pleas and proceedings had and done at a regular term of the United States circuit court of appeals for the fifth judicial circuit, begun on the third Monday of November, 1898, and held in the court-room of said court, in the city of New Orleans, before the Honorable Don A. Pardee, the Honorable A. P. McCormick, and the Honorable David D. Shelby, United States circuit judges for the fifth judicial circuit.

THE HUGULEY MANUFACTURING COMPANY and ALABAMA AND Goergia Manufacturing Company, Appellants,
vs.
THE GALETON COTTON MILLS and J. J. ROBINSON, Trustee, &c., Appellees.

Be it remembered that heretofore to wit on the 1st day of February, 1899, a transcript of the record of the above-styled cause from the circuit court of the United States for the northern district of Georgia, was filed in the office of the clerk of the said United States circuit court of appeals for the fifth circuit in the words and figures following to wit:

1 In Court of Appeals.

HUGULEY MANUFACTURING COMPANY, Appellant,
versus
GALETON COTTON MILLS.

In this cause it is agreed that the appellants print the first volume of the record brought up on the present appeal, down to and including page 156. The court to order such other portion of the record as it may deem proper, or necessary hereafter to be printed.

February 21, 1899.

J. M. CHILTON,
W. R. HAMMOND, *Counsel for Appellant.*
DORSEY, BREWSTER & HOWELL,
B. F. ABBOTT, *Attorneys for Appellee.*

(Indorsed:) No. 798. Agreement as to printing. Filed Feb. 22, '99. J. M. McKee, clerk.

2 U. S. Circuit Court of Appeals for the Fifth Circuit.

HUGULEY MANUFACTURING COMPANY, Appellants,
versus
GALETON COTTON MILLS ET AL., Appellees.

To O. C. Fuller, clerk of the U. S. circuit court for the northern district of Georgia:

You will please note the following directions, in copying the documentary evidence, in the above-stated cause:

1. You will only copy such portions of the Atkinson & Turner cotton books as are embraced between the dates of Sept. 6, 1892, and May 6, 1896. In copying said books, you will omit the names of the persons from whom the cotton was purchased, and the marks on the bales, copying only the weights and prices. Where the book shows the aggregate weight of cotton purchased during a single day, and the aggregate price paid, you will only copy the aggregate weights and prices for each day. Where the books show the prices per pound paid for any lot of cotton you will copy that.

2. In copying the Galeton Cotton Mills books, you will only copy the date, weights and prices, omitting the numbers and marks on the bales, and the names of the sellers. Where the weights and prices are aggregated on the book for each date, you will simply copy the aggregate weights of all the bales, and the aggregate price paid, as shown by the book, and the price per pound, where that is shown, omitting the separate weight of each bale, but only in cases where the aggregate weights are shown and the aggregate prices corresponding to the aggregate weights are shown. In copying the first Galeton cotton book, you will omit the memoranda on pages 258 to 299 inclusive, as they were not read in evidence and have no connection with the case.

3. You will not copy the cotton book of J. T. Zachry, as it shows substantially the same thing as the cotton books of Atkinson & Turner, and is enormously bulky, and was only used on the hearing to show the prices of cotton.

4. You will omit all depositions or interrogatories taken on the hearing before the master, which the record discloses were ruled out, or not considered by him, the same being as follows: J. T. Frazier's and Logan Owen's, they having been sworn and having testified before the master; John W. Dickey's, which were not
3 offered; J. W. Brown's and Geo. W. Hamilton's (taken jointly not offered, Geo. W. Hamilton having been sworn and having testified before the master; first set of T. A. Burke, which were ruled out, only the second set having been read in evidence.

5. There are certain matters that are merely formal upon which no question was raised, or can be raised, which are not necessary to the hearing of the case on appeal, which you are directed to omit, as follows:

(*a.*) All commissions to take interrogatories;

(*b.*) All certificates of the commissioners to the execution of interrogatories. You will only give the names of the witnesses, the

dates when the interrogatories were executed, and the questions and answers.

6. There are two sets of interrogatories where the same set of questions and cross-questions were asked the witnesses, in the same identical language. These are James S. Hamilton and T. A. Burke. You will copy the questions and cross-questions only once, and the answers of the witnesses immediately following them.

7. In several sets of interrogatories there is a long inventory of machinery etc., which is a part of the second direct interrogatory. This inventory is found on pages 158 to 162 of the record. You will copy this inventory only once, and in the other sets where it is copied you will simply make a reference to the copy thus made, and omit copying it.

J. M. CHILTON,
W. R. HAMMOND,
Attorneys for Appellants.

Messrs. B. F. Abbott and P. H. Brewster, counsel for appellees:

You will please take notice that we have this day filed the foregoing directions with the clerk of the U. S. circuit court for the northern district of Georgia, in reference to the making up the record and proofs in the case therein stated, Dec. 23, 1898.

J. M. CHILTON,
W. R. HAMMOND,
Attorneys for Appellants.

STATE OF GEORGIA, }
Fulton County. }

In person came before the undersigned, Howard H. Arnold, who, after being duly sworn, deposes and says that he this day carried the original paper hereto attached to Mr. B. F. Abbott, with
4 a copy of the same, from W. R. Hammond, and requested him to keep the copy and acknowledge service of the original. Mr. Abbott kept both papers, and deponent came back to Mr. Hammond's office without them.

HOWARD H. ARNOLD.

Sworn to and subscribed before me this the 23rd day of December, 1898.

O. C. FULLER,
Clerk U. S. Circuit Court, N. D. of Ga.

Filing: Filed in clerk's office Dec. 23, 1898.
O. C. FULLER, *Clerk.*

O. C. Fuller, clerk United States circuit court, northern district of Georgia:

In making up the record in the above-stated case for the court of appeals you will omit from the evidence a letter-press book showing fortnightly reports of the superintendent of the Alabama & Georgia Mfg. Co. from Feb. 28, 1885, to May 31, 1896, being 223 pages in

all, which was introduced in evidence by the defendants as we do not propose to dispute the testimony of the witness, William Brown, as to the average production of the spindles of that mill during that time, which testimony is based upon said copies of said fortnightly reports contained in said book.

You will also omit a memorandum from which the same witness testified and which was filed as a part of the evidence and marked "C" by the stenographer, which memorandum was introduced for the same purpose as the book above referred to, and was taken by the witness from the book, as stated by him, since we will not dispute the testimony of the witness, William Brown as to the average production of the spindles as above stated.

Dec. 26, 1898.

J. M. CHILTON,
W. R. HAMMOND,
Counsel for Appellant.

STATE OF GEORGIA, }
Fulton County. }

In person came before the undersigned W. R. Hammond, who, being duly sworn, deposes and says that he this day deposited in the U. S. mail a copy of the foregoing paper, in an envelope, duly stamped and addressed to B. F. Abbott and P. H. Brewster, counsel for appellees, to their P. O. address, Atlanta, Ga.

W. R. HAMMOND.

5 Sworn to and subscribed before me Dec. 27, 1898.

[SEAL N. P.] R. L. FOREMAN,
N. P., Fulton Co., Ga.

Filing: Filed in clerk's office 27 day of Dec., 1898.

O. C. FULLER, *Clerk.*

Mr. O. C. Fuller, clerk United States circuit court for the northern district of Georgia:

In making up the transcript of the record and proofs in the above-stated case, you will please omit and not copy the stock book of the Alabama & Georgia Mfg. Co., testified about by the witness Lang, in his testimony showing the production of the Alabama & Georgia mills from 1882 to 1888, as counsel for appellant will not controvert the statement made by the witness Lang in his testimony concerning the production of the Alabama & Georgia mills during the period covered by said stock book. This book is not material to the hearing of the case in the court of appeals, and you will please not copy it.

Dec. 29, 1898.

J. M. CHILTON,
W. R. HAMMOND,
Solicitors for Appellant.

STATE OF GEORGIA, }
Fulton County. }

In person came before the undersigned W. R. Hammond, who, being duly sworn, deposes and says that he has this day mailed a copy of the foregoing papers to B. F. Abbott and P. H. Brewster, attorneys for appellants in above-stated case, by inclosing the same in an envelope duly stamped and addressed to them to their post-office address at Atlanta, Ga.

W. R. HAMMOND.

Sworn to and subscribed before me Dec. 29, 1898.

O. C. FULLER,
Clerk U. S. Circuit Court.

Filing: Filed in clerk's office Dec. 29, 1898.

O. C. FULLER, *Clerk.*

ATLANTA, GA., *January 6th*, 1899.

Mr. O. C. Fuller, cl'k U. S. circuit court, Atlanta, Ga.

DEAR SIR: We have been notified by counsel for appellant in the case of J. J. Robinson, trustee, *vs.* Ala. & Ga. Mfg. Co., and The *the* Huguley Mfg. Co., *et al.*, No. 360, that they have requested
6 you to omit from the record in transmitting the same to the court of appeals, certain books, papers and other pieces of evidence. Under the assignment of error, as shown by the record, we think that all of the testimony, as introduced on the trial of the cause before the special master, should be transmitted. We object therefore to the omission from the record of the various pieces of evidence designated by counsel, or any of the evidence; especially do we object to the omission of the books of Zachry, the warehouseman at West Point.

Respectfully yours,

P. H. BREWSTER,
B. F. ABBOTT,
Solicitors for Appellees.

Circuit Court U. S., Northern Dist. of Ga.

J. J. ROBINSON ET AL.
vs.
ALABAMA & GEORGIA MANUFACTURING CO. ET AL. } 360. In Equity.

Appeal to the circuit court of appeals for the fifth circuit of the United States.

We agree that the clerk, in making up the record, may omit therefrom all such parts as appear in the record made up and transmitted on the two former appeals in this case to said circuit court of appeals.

And either party, on the hearing of this appeal, may be at liberty

to refer to any such parts of the record of said former appeals, or either of them, as they may see proper.

Jan'y 14, 1899.

J. M. CHILTON,
W. R. HAMMOND,
Att'ys for Appellant.
B. F. ABBOTT, *Solicitor as of Record.*
DORSEY, BREWSTER & HOWELL.

Filing: Filed in clerk's office 14 day of Jan'y, 1899.
O. C. FULLER, *Clerk.*

7 *Mandate of Court of Appeals.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the northern district of Georgia, Greeting:

Whereas, lately in the circuit court of the United States for the northern district of Georgia, before you, or some of you, in a cause between J. J. Robinson, trustee, complainant, and The Alabama and Georgia Manufacturing Company and others, respondents, wherein a final decree was rendered by the said circuit court as follows, to wit:

In the Circuit Court of the United States, Northern District of Georgia.

J. J. ROBINSON ET AL.
vs.
ALABAMA & GEORGIA MANUFACTURING CO. *et al.*
No. 360. In Equity.

Foreclosure of Mortgage.

This cause came on to be heard at this term of the court and was argued by counsel thereupon upon consideration thereof it was ordered, adjudged and decreed as follows:

1. The court finds that default was made in the payment of the interest on all the bonds issued by the Alabama and Georgia Manufacturing Co., and to secure which the trust deed sought in this suit to be foreclosed was executed, to wit: Nos. from 1 to 130 inclusive, which interest became due on July 1st, 1890, and that said default continued for a period longer than six months, and by reason of such default in the payment of said interest for a period longer than six months the principal and interest on each of said bonds became due and payable on and after the first day of January, 1891.

2. The court finds that after said default had occurred as found above, but before the filing of this suit, the holders of Nos. 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124,

125, 126, 127, 128, being forty bonds in number, accepted the interest on the said bonds, and by the accepting of said interest they waived the default, and the principal of said bonds amount-
8 ing to the aggregate sum of twenty thousand (20,000) dollars was not due and payable at the date of filing this suit, and that said trust deed cannot be foreclosed for said amount of said forty bonds.

3. The court finds that interest was not accepted on the remainder of the bonds, ninety in number, to wit: Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 129 and 130, and said default as hereinbefore found to have occurred was not waived and said trust deed can be foreclosed for the amount due on said ninety bonds, the principal due thereon being the sum of forty-five thousand (45,000) dollars, with accrued interest.

4. The court finds, of those bonds upon which the interest was accepted and the default waived, Nos. 67, 68, 69, 70, 71, 72, 73, 74, 115, 116, 117 and 118, belonged to Mrs. S. H. Huguely, now Mrs. Kyle, and the amount of the principal is six thousand (6,000) dollars; and the accrued interest unpaid is coupons Nos. 17, 18, 19 and 20, amounting in the aggregate to the sum of five hundred and sixty (560) dollars; and the interest due on the coupons to Nov. 1st, 1894, is one hundred and six (106) dollars and fifty-six (56) cents; making due as the total amount of said twelve bonds, six thousand, six hundred and sixty-six and fifty-six one-hundredths (6,666.56) dollars at said date. No. 75 belongs to Mrs. S. E. Elliott, and the principal is five hundred (500) dollars, and the accrued interest unpaid is coupons Nos. 17, 18, 19 and 20, amounting in the aggregate to the sum of eighty (80) dollars and interest due on the coupons is eight and 88/100 (8.88) dollars; making total amount of said bond five hundred and eighty-eight and 88/100 (588.88) dollars, Nov. 1st, 1894. Nos. 76, 78, 79 and 80 belong to J. E. Elliott and the aggregate principal is two thousand (2,000) dollars; and the accrued interest is unpaid coupons Nos. 17, 18, 19 and 20, amounting in the aggregate to three hundred and twenty (320) dollars, the interest due on these coupons is thirty-five and fifty-two hundredths (35.52) dollars; making total of said four bonds, principal and interest, November 1, 1894, twenty-three hundred and fifty-five and 52/100 (2,355.52) dollars. Nos. 111, 112, 113, and 114 belong to T. H. Huguely, the principal and interest, numbers of coupons, of unpaid interest and interest on coupons being exactly in amounts corresponding to last four bonds belonging to J. E. Elliott, total being twenty-three hundred and fifty-five and 52/100 (2,355.52) dollars. Nos. 125,
9 126, 127 and 128 belong to the Atlanta national bank; the aggregate principal is two thousand (2,000) dollars, and the accrued interest is unpaid coupons Nos. 14, 15, 16, 17, 18, 19 and 20, amounting in the aggregate to the sum of five hundred and sixty (560) dollars interest due on these coupons is ninety-one and 56/100

(91.56) dollars making total of said four bonds two thousand six hundred and fifty-one and 56/100 (2,651.56) dollars, Nov. 1, 1894. Nos. 84, 85 and 86 belong to Loula A. Elliott, aggregate principal being fifteen hundred (1,500) dollars; accrued interest unpaid coupons Nos. 17, 18, 19 and 20, amounting in the aggregate to the sum of two hundred and forty (240) dollars; interest on coupons, twenty-six and 64/100 (26.64) dollars; making total of said three bonds seventeen hundred and sixty-six and 64/100 (1,766.64) dollars to Nov. 1, 1894. Nos. 119, 120 and 121 belong to G. A. Huguely, and the principal and accrued interest in unpaid coupons, and interest on coupons is identical with numbers belonging to Loula A. Elliott, total being seventeen hundred and sixty-six and 64/100 (1,766.64) dollars, Nov. 1, 1894. Nos. 122, 123 and 124 belong to T. H. Hooper; principal, interest coupons unpaid, and interest on coupons identical with those belonging to Loula A. Elliott, total being seventeen hundred and sixty-six and 64/100 (1,766.64) dollars, Nov. 1, 1894. Nos. 77, 81, 82, 83, 87 and 88 belong to L. Lanier; principal in aggregate three thousand (3,000) dollars; accrued interest in unpaid coupons Nos. 17, 18, 19 and 20 four hundred and eighty (480) dollars; interest on coupons fifty-three and 28/100 (53.28) dollars; making total of six bonds thirty-five hundred and thirty-three and 28/100 *and* (3,533.28) dollars, Nov. 1, 1894. Making a total of twenty thousand (20,000) dollars principal at the date of filing this suit which was not due, and on said bonds since filing this suit has accrued thirty-four hundred and fifty-one and 24/100 (3,451.24) — in unpaid coupons and interest on coupons to Nov. 1, 1894.

5. The court finds that of those bonds on which interest was not accepted and the default was not waived, Nos. 37 to 66 inclusive belong to Mrs. L. Lanier, guardian of Susie Huguely; aggregate principal due at date of filing suit fifteen thousand (15,000) dollars; accrued interest in unpaid coupons Nos. 13 to 20 inclusive, forty-eight hundred (4,800) dollars, interest on coupons to Nov. 1, 1894, eight hundred and sixty-eight and 80/100 (868.80) dollars; making total due on said bonds to Nov. 1, 1894, twenty thousand six hundred and sixty-eight and 80/100 (20,668.80) dollars. Nos. 21 to 36 inclusive belong to Mrs. L. Yancey; aggregate principal due date of filing, eight thousand (8,000) dollars; accrued interest in unpaid coupons Nos. 13 to 20 inclusive, aggregate twenty-five hundred and sixty (2,560) dollars; interest on coupons to Nov. 1, 1894, four hundred and sixty-three and 12/100 (463.12) dollars; making total due on said sixteen bonds eleven thousand and twenty-three and 12/100 (11,023.12) dollars. Nos. 1, 2, 3 and 4 belong to Mrs. A. D. Moon; Nos. 5, 6, 7 and 8 belong to the heirs of Julia A. Walker; Nos. 11, 12, 13 and 14 belong to Lavina Hackney, Nos. 17, 18, 19 and 20 belong to Mrs. Lou King. Amount of aggregate principal of each of the above blocks of four bonds is two thousand (2,000) dollars, due at date of filing this suit; accrued interest in unpaid coupons Nos. 13 to 20 inclusive, six hundred and forty (640) dollars; interest and coupons to Nov. 1, 1894, one hundred and fifteen and 78/100 (115.78) dollars; making total on each block

of four bonds twenty-seven hundred and fifty-five and 78/100 (2,755.78) dollars. Nos. 7 and 8 belong to Joel Walker, Nos. 9 and 10 belong to G. A. Huguley, Nos. 129 and 130 belong to Demetrious Jannaupunto; amount of aggregate principal due on each block of two bonds above is one thousand (1,000) dollars; the accrued interest on unpaid coupons Nos. 13 to 20 inclusive, aggregates three hundred and twenty (320) dollars; interest on coupons fifty-seven and 92/100 (57.92) dollars, to Nov. 1, 1894; making total due on each block of two bonds, Nov. 1, 1894, principal and interest thirteen hundred and seventy-seven and 92/100 (1,377.92) dollars. Nos. 99 to 104, both inclusive, belong to S. D. Hutcheson; Nos. 105 to 110, both inclusive, belong to E. J. Nolan; the amount of the aggregate principal due on each of the last two blocks of six bonds each is three thousand (3,000) dollars; accrued interest in unpaid coupons Nos. 13 to 20 inclusive, is nine hundred and sixty (960) dollars; interest on coupons to Nov. 1, 1894, one hundred and seventy-three and 76/100 (173.76) dollars; making total on each of said block of six bonds Nov. 1, 1894, principal and interest, forty-one hundred and thirty-three and 76/100 (4,133.76) dollars. Nos. 89 to 98 inclusive belong to A. T. Dallis; the aggregate principal due on said ten bonds is five thousand (5,000) dollars; accrued interest in unpaid coupons Nos. 13 to 20 inclusive, one thousand (1,000) dollars; interest on coupons to Nov. 1, 1894, two hundred and eighty-nine and 60/100 (289.60) dollars. Making a total due on said ten bonds principal and interest to Nov. 1, 1894, (6,889) 60/100 dollars and making a total of principal due on the said ninety bonds upon which interest was not paid and accepted and the default waived of forty-five thousand (45,000) dollars, and total interest due up to November 1, 1894, seventeen thousand and five and 92/1000 (17,005.92) dollars.

11 6. And it is further adjudged and decreed that the plaintiff do recover of and from the said Alabama and Georgia Manufacturing Company the said sum of forty-five thousand (45,000) dollars principal, and seventeen thousand and five and 92/100 (17,005.92) dollars for interest up to the 1st day of November, 1894, with all accruing interest on said principal from said date until paid, at 8 per cent. per annum and —— dollars as costs of this cause, the said sums to be satisfied out of the mortgaged premises hereinafter described, that is to say, "All of a large island in the Chattahoochee river, designated as Island No. 6, containing one hundred and forty-three (143) acres, more or less. Also Island No. 9, containing seven (7) acres, more or less. Also a small island between No. 6 and No. 9, upon which the east end of the factory building rests, containing four (4) acres, more or less. All of said three above-described islands being in the 20th district of Harris county, Georgia. Also all that tract or parcel of land lying on the west side of the Chattahoochee river, opposite the above-described islands bounded on the east by said river, beginning at a point on the west bank of said river, nearly opposite the center of the seven (7) acre island, at a black gum, at or near a place known as Sell's Corner; thence in a straight line to a point where the land owned

in 1868 by Mrs. Freeman, Job Ross and James Campbell joins, known as the Ross and Freeman corner, to a pine stake; thence in a line to a branch near said stake, thence in a line down said branch to said river; thence down the western bank of said river to the beginning point, containing sixty-five and 23/100 (65.23) acres, more or less, lying and being in Chambers county, State of Alabama, and being part of section twenty-eight and section twenty-nine (28 and 29), township twenty-one (21), range twenty-nine (29), as well as a forty (40) for right of way from factory building to the public road leading from West Point, Georgia, to Berlin, Ala., at any point where the factory company may locate it, including all tenements and improvements, including the cotton mill and all the machinery therein or thereto belonging, and all water privileges and riparian rights now or hereafter owned or enjoyed by said Alabama and Georgia Manufacturing Company.

7. It is further ordered and decreed that the remainder of said bonds, to wit: forty (40) in number, which are numbers as set out in paragraph 2 of this decree for the aggregate principal sum of twenty thousand (20,000) dollars and for the sum of three thousand, four hundred and fifty-one and 24/100 (3,451.24) dollars interest thereon to November 1, 1894, were not due at the time of the filing of this suit, and said plaintiff as trustee is not entitled to recover therefor.

12 8. That the equity of redemption in and to said mortgaged premises be and the same is hereby barred and forever foreclosed, so far as the rights of said defendant corporation, or any one claiming under or through it, is concerned, since the date of the execution of said trust deed or mortgage, to wit: the 2nd day of January, 1884.

9. It is further adjudged and decreed that unless the said defendant shall pay into this court, within 30 days from this date, the said sums of money, to wit: forty-five thousand (45,000) dollars principal, and seventeen thousand and five and 92/100 (17,005.92) dollars interest, with all accruing interest, at 8 per cent., as in this decree adjudged to be due, together with the costs of this cause; then on failure to so pay in the same, Sam'l C. Dunlap, Esquire, who is hereby appointed commissioner of this court to advertise and offer the said property for sale, on the following terms and conditions:

Said commissioner will advertise said property once a week for four weeks in the Daily Constitution, newspaper published in the city of Atlanta, and in the Hamilton Journal, published in Hamilton, Harris county, Georgia, prior to the offering said property for sale, and on Tuesday, the 4 of June, 1895, at twelve o'clock m., he will offer the same for sale to the highest bidder before the courthouse door in the town of Hamilton, Harris county, Georgia. Said commissioner will report to this court the name of the highest bidder, with the amount of his bid for confirmation or rejection. He shall require the person bidding off said property, should he be a person other than one representing a majority in amount of the outstanding bonds of the said company, to pay into the hands of the commissioner 10,000.00, ten thousand dollars, to insure compliance

with his bid, in case the sale is confirmed. Any bondholder may bid on said property, and in case it shall be bid off by any person for or on behalf of the holders of a majority of said bonds in amount, then such purchaser shall not be required to pay into the hands of the commissioner pending his report and confirmation or rejection any more than 5,000 dollars to cover costs, fees and expenses of sale.

10. And it is further adjudged and decreed that in case the holders of said bonds, or any of them, purchase said property, they shall be entitled on confirmation to pay the balance of the purchase-money in and with the bonds of said company, whether the same have matured or not, in the proportion and to the extent that such bonds would be entitled to share in the proceeds of sale if all the purchase-money was paid in cash.

11. It is further ordered and decreed that in case said defendant fails to pay into court the said sums hereby decreed to have
13 matured at the time of the filing of the bill, within the time herein allowed, and in case the property is sold and the proceeds *is* brought into court for distribution, then and in that event the bonds hereby decreed not to have matured at the time of the filing of this bill, which bonds are described in paragraph 2 of this decree, are hereby entitled to share in the proceeds of said sale on distribution in amounts according to the findings of the special master with all accruing interest and the holders and owners of said bonds may present them, with coupons attached, for their proper *pro rata* share of said proceeds according to their tenor and effect.

The court being of the opinion that the property decreed to be sold is indevisable and cannot be sold to satisfy that portion of the bonds which are hereby decreed to have matured, without destroying the value of the property as security for said bonds. And it further appearing that the defendant is insolvent and has ceased to do business; and it further appearing that the said bonds described in the 2 paragraph of this decree have become due since the filing of the bill by reason of non-payment of interest.

12. The rights of the purchaser of the said property at the sale heretofore made as to amount paid into court are reserved and subject to any other and further decree as to the court may seem meet and proper. The court also reserves the right to make any other and further decree in reference to the entries of credits on said bonds and the control of the same as shall appear to be proper on final distribution as well as to make any further decree in conformity with the general scope hereof as well as to make any order or decree adjusting the claim of defendants for costs in the court of appeals.

13. It is further ordered and decreed that for any balance of said sums hereby adjudged to be due, which may remain unsatisfied after the sale of said property the said plaintiff may have execution therefor against said defendants.

In open court, March 30, 1895.

WM. T. NEWMAN,
U. S. Judge.

Filed in clerk's office 1 day of April, 1895.

O. C. FULLER, *Clerk*,
By J. D. STEWARD, *Deputy*.

The commissioner named in the foregoing decree having failed to advertise the property described in the decree for sale of the first Tuesday in June, 1895, for want of time it is now ordered and decreed that this decree be amended so that the commissioner,
14 Sam'l C. Dunlap, Esq., be and he is hereby ordered and directed to offer said property for sale on the first Tuesday in July, 1895, after due advertisement as in said decree provided, instead of the first Tuesday in June, 1895.

In open court this 27 May, 1895.

WM. T. NEWMAN,
U. S. Judge.

as by the inspection of the transcript of the record of the said circuit court, which was brought into the United States circuit court of appeals for the fifth circuit by virtue of an appeal sued out by the said Alabama and Georgia Manufacturing Company and others agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And whereas, in the present term of November, in the year of our Lord one thousand eight hundred and ninety-five, the said cause came on to be heard before said United States circuit court of appeals, on the said transcript of record, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court that the decree of the said circuit court in this cause be and the same is hereby affirmed.

It is further decreed that the appellants, and the surety on the appeal bond herein, J. B. Redwine, be condemned to pay the costs of this cause in this court, for which execution may be issued out of said circuit court.

January 14th, 1896.

Clerk's costs $33.10. $29.85 paid on account clerk's costs by W. T. Huguley. Att'y's docket fee $20.00.

You, therefore, are hereby commanded that such proceedings be had in said cause as according to right and justice, and the laws of the United States, ought to be had, the said appeal, notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 25th day of February, in the year of our Lord one thousand eight hundred and ninety-six.

J. M McKEE,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

Filing: Filed in clerk's office 10th day of March, 1896.

O. C. FULLER, *Clerk.*

15 *Order Entering Mandate.*

In Circuit Court of U. S., Nor. Dist. of Ga.

J. J. ROBINSON, Trustee,
vs.
ALABAMA & GEORGIA MANUFACTURING CO. *et al.* } No. 360. In Equity.

Bill, etc. Final decree. Appeal. Mandate of affirmance.

This cause having been carried by appeal to the circuit court of appeals and the decree of this court having been affirmed, it is now, on motion of plaintiff,

Ordered that the mandate from said circuit court of appeals be entered on the minutes of this court in said cause stated, and that in accordance with the judgment of said court of appeals the said final decree of this court stand affirmed.

In open court March 10th, 1896.

WM. T. NEWMAN,
U. S. Judge.

Filing: Filed in clerk's office 10 day of March, 1896.
O. C. FULLER, *Clerk.*

Order Directing Sale.

U. S. Circuit Court, Northern District of Georgia.

J. J. ROBINSON, Trustee,
vs.
ALABAMA & GEORGIA MFG. COMPANY ET AL. } No. 360. In Equity.

A sale of the property embraced in the final decree in this case having been prevented by an appeal of the cause to the circuit court, said appeal having been disposed of and affirmed:

It is now ordered that Samuel C. Dunlap, Esq., be and he is hereby ordered and directed to offer said property for sale on Tuesday, the 5th day of May, 1896, after due advertisement as in said decree provided and on the terms therein specified.

In open court, March 10, 1896.

WM. T. NEWMAN,
U. S. Judge.

Filing: Filed in clerk's office 10 day of March, 1896.
O. C. FULLER, *Clerk.*

16 *Amendment to Petition of Alabama & Georgia Mfg. Co. et al.*

United States Circuit Court, Northern District of Georgia.

J. J. ROBINSON ET AL.
vs.
THE ALABAMA & GEORGIA MANUFACTURING Co. and William T. Huguely. } In Equity. No. 539.

To the honorable the circuit court of the United States for the northern district of Georgia:

The Alabama & Georgia Manufacturing Company, and the Huguley Manufacturing Company, each a corporation under the laws of the State of Georgia, amend their petition heretofore filed in the above-entitled cause on the 10th day of July, 1893, by leave of the court first had and obtained, reaffirming the allegations contained in said original petition, and your petitioners further show to the court, that since the date of the filing of said petition the purchasers of said property have still retained the possession of the same, and still remain in the possession of the same, and that the sole authority under which they have held and still hold the same is the decree which was reversed and of the sale made thereunder. Your petitioners aver that the rents and profits of said property, ever since it has been in the possession of the present holders of the same have amounted to at least fifty thousand dollars a year, and is far in excess of the amount now due on said mortgage, both of principal and interest.

Your petitioners further aver that the holders of the original bonds of the Huguley Manufacturing Company, under which this foreclosure was had, were the organizers of the present corporation, The Galeton Cotton Mills, except Mrs. Sallie H. Huguley, who was the owner of six thousand dollars of the bonds, and J. Janopoulo, who was the owner of one thousand dollars of the same. All the rest of said bondholders became the purchasers of said property under the reorganization.

Your petitioners, and especially The Huguley Manufacturing Company renew its prayer for an accounting to be taken of said rents and profits of said property of said mill, and that the said purchasers of the same, who were the holders of the bonds as aforesaid, be held to account for the same, and that the court pass an order for the impounding of the records of the sale of said property, so that the same shall remain under the control of the court until the question of the value of the said rents and profits shall be determined by the court, and for such other or further relief as your petitioners may be entitled to in the premises.

____ ____,
Petitioners' Attorneys.

17 UNITED STATES OF AMERICA, }
Northern District of Georgia. }

In person came before the undersigned, William T. Huguley, one of the foregoing petitioners, and representing the other two, and says on oath, that the statements contained in the foregoing amended petition are true, of his own knowledge, and he has read over the allegations of fact contained in the original petition to which this is an amendment, and that the facts alleged to be true in said petition are true, of deponent's own knowledge. Deponent has made a very careful estimate of the rents and profits, and he is prepared to state positively that the estimate of fifty thousand dollars a year is a very conservative estimate. Deponent means to state that the rents and profits should be that amount under proper management.

Deponent is abundantly prepared by evidence to substantiate the value of said rents and profits, and to show to the court that the same should be at least fifty thousand dollars a year.

WM. T. HUGULEY.

Sworn to and subscribed before me, this ninth day of March, 1896.

GEO. S. BARNARD,
Deputy Clerk U. S. Dist. Court.

Filing: Filed in clerk's office 10th day of March, 1896.
O. C. FULLER, *Clerk.*

Order of Reference to Special Master.

In the Circuit Court of the United States for the Northern District of Georgia.

J. J. ROBINSON, Trustee, }
vs. }
ALABAMA & GEORGIA MANUFACTURING COMPANY ET AL. }

Bill to Foreclose Mortgage.

It is ordered that this case be referred to Thomas B. Felder, Esq., for the purpose of taking an accounting of the proper receipts and disbursements incident to the custody and operation of the mortgaged property, and of the rents and profits earned or that should have been earned since its delivery to the purchasers under the former sale; and to ascertain whether there has been any
18 conversion of the property connected with said property, and the amount and value of the same; as to whether there has been any waste or damage to the property, and as to whether the same is the result of ordinary wear and tear, and as to the liability of the holders of the property therefor.

This March 16th, 1896.

WM. T. NEWMAN,
U. S. Judge.

Petition to Postpone Sale and Modify Decree.

United States Circuit Court, Northern District of Georgia.

J. J. ROBINSON, Trustee,
vs.
ALABAMA AND GEORGIA MANUFACTURING Company, Huguley Manufacturing Company, and W. T. Huguley. } In Equity. No. 539

Petition of defendants for rents, issues, and profits.

Petitioners represent to the court that since the reference of the above matter to the special master, they have used all possible diligence to speed the hearing, and have made considerable progress but have been unable to conclude the cause. It will undoubtedly take sixty days longer to bring the matter to a final determination and report from the master. Thirty days more will hardly suffice. It is important that a report be made before the sale of the property which is to come off, as at present ordered and advertised, on the first Tuesday in the present month, because petitioners claim, and with good reason under the evidence so far adduced, that their demand is more than sufficient to cancel the mortgage indebtedness. They have shown a strong *prima facie* case to that effect. They have shown by O. B. Tilton, the superintendent of the Exposition cotton mills in this city, that he has made a thorough examination of this mill, in minute details within the last month, and that in his opinion, its earning capacity, in September, 1892, and from then on until the present time, it was at that time in good repair and everything in first-class condition, should not have been less than one hundred and twenty-five dollars per day, and that there are three hundred and twelve working days in the year. He says the mill has not been kept in repair for three and a half years, and is in miserable condition, and now making more than half what it should make. He made a thorough and complete inventory of all the machinery and
19 buildings, and said no signs whatever appeared of any repair having been made in three and a half years. He testifies that there has been more than $25,000.00 damage to the property by the water coming in on the machinery, and by its having been badly cared for. He says that if the mill and machinery, as he saw it, had been in good condition and thorough repair three and a half years ago, with a tight roof, it could have been kept so, and in addition could have earned at least $125.00 per day. He submitted careful estimates based upon close and thorough calculations, showing this would be true. He is a thorough mill expert. He has been in the business for twenty years, and went to this property at the request of Mr. Huguley, and with the permission of the president of the Exposition cotton mills, and gave it a very thorough and careful examination.

Petitioners also showed by the testimony of W. T. Huguley, that

this mill had been placed in thorough repair, and was so when turned over to the present purchasers and holders. The Huguley Manufacturing Company had been in possession of it for twenty-seven months, and had expended $26,000.00 in repairs and findings, and had placed the mill, machinery and the entire property, in first-class condition, and it was so when it was turned over to the bondholders' committee who afterwards organized as the Galeton cotton mills, in September, 1892. He testified that the roof was in good, water-tight condition. His testimony was very full and thorough on these points. He went into the matter in thorough detail. He was on the stand many days, and the majority of the time was consumed in cross-examination. The testimony showed the roof at the present time to be in a wretched condition, and full of great holes all over it, so that the water came down in large quantities, making it necessary that tarpaulins should be stretched over the machinery in order to preserve it at all. This condition of the roof was shown by several of the witnesses, including Tilton and Huguley. The evidence of Tilton shows clearly that the principal damage to the machinery was caused by water and the rust consequent therefrom.

The claim of petitioners has been fully made out by the evidence so far, to the extent of more than one hundred thousand dollars. The mill property has been shown by the evidence to be very valuable. M. B. Torbett, who testified that he was an insurance expert, was introduced and showed that he carried a line of insurance on this property amounting to two hundred thousand dollars, and that it was placed by him after a careful survey of the property, and was accepted by the insurance experts of the companies he represented, after they had also examined and surveyed the property. This insurance was carried by him in the year, 1892.

Your petitioner represents that this valuable property is about to be sacrificed by sale to come off on next Tuesday, under a proceeding in favor of bondholders, who have held possession of it for more than three years and a half, and who are undoubtedly accountable to petitioners for what this property earned, or should have earned, during said period. Petitioners expect to show by other evidence, which they have not yet had an opportunity to bring before the master, but which they expect to produce on Thursday, the seventh day of May, to which time the hearing has been adjourned, from witnesses living at or near the mill, and who have been thoroughly familiar with its condition all this time, that it was in a first-class condition, in thorough repair in September, 1892, when turned over to the bondholders who were purchasers at the sale.

Premises considered, your petitioners pray that the sale of said property be postponed for at least sixty days in order that the master can have time to make up his report, and file the same touching the amount of your petitioners' claim as aforesaid.

Your petitioners further pray that the court pass such order, and render such supplemental decree as may be necessary and proper for the protection of the rights of petitioners in the premises, and that the court order and direct the impounding of the proceeds of

such sale, and that the same shall be held subject to the claim of your petitioners and until the same shall be finally determined by the court, and that when so determined the same shall be paid to your petitioners out of the proceeds of such sale.

And your petitioners further pray for such further or other relief as they may be entitled to in the premises according to the nature and circumstances of this case. And your petitioners will ever pray, &c.

JOHN M. CHILTON,
BIGBY, REED & BERRY,
ALLEN FORT,
W. R. HAMMOND,
Attorneys for Petitioners.

UNITED STATES OF AMERICA, }
Northern District of Georgia, County of Fulton. }

In person came before the undersigned, William T. Huguley, who after being duly sworn, deposes and says, that all the facts stated in the foregoing petition are true of deponent's own knowl-
21 edge. Also came William R. Hammond, of counsel for petitioners, who after being duly sworn, deposes and says, that the facts stated in the foregoing petition so far as they relate to the evidence already taken before the master are true of deponent's own knowledge, that is the testimony has been taken to the effect as stated therein, and the conclusion stated therein, as to the amount of the recovery that would be fully justified under the evidence already adduced, is correct, in the opinion of deponent. Deponent further says that he has conducted the examination of witnesses under said petition and order of reference before the master, and has given careful attention to same, and gives the foregoing opinion as the deliberate result of his judgment after hearing said evidence, up to the present time, and he says further that he has used all diligence possible, under the circumstances in which he has been placed, for the speeding of the hearing before the master. Deponent was compelled by providential cause to leave the city of Atlanta on Saturday at noon for a distant part of the country, and could not return before Wednesday afternoon of the present week, and the preparation of this petition, and the further hearing of evidence during that interval was necessarily prevented, as deponent was the only counsel who had been present during the entire time of the conduct of said case before the master, and who was in position, for that reason, to properly present this petition before the court. Deponent further states that in his opinion, the ends of justice can only be met by a postponement of said sale for at least sixty days.

W. T. HUGULEY.
W. R. HAMMOND.

Sworn to and subscribed before me, this May 1st, 1896.
J. A. HYNDS,
Notary Public, Fulton County, Ga.

Order.

On considering the foregoing petition, it is ordered that the same be heard before me on the 2nd day of May, 1896, at the hour of 10 in said court, and that a copy of said petition, and this order be served at once on counsel for complainants in said cause, and respondent in this petition.

WM. T. NEWMAN,
U. S. Judge.

Service: I acknowledge service of a copy of the within petition and order. This 3 p. m., May 1st, 1896.

DORSEY, BREWSTER & HOWELL,
B. F. ABBOTT,
Att'ys for Galeton Cotton Mills et al.

22 *Order Denying Application.*

It is ordered that this application be denied, without prejudice to the rights of the petitioners to full protection of any and all rights they or either of them may have at any time before the final confirmation of the sale, the court hereby reserving the right and power to pass such orders in the premises as may be necessary or proper for that purpose.

In open court May 2nd, 1896.

WM. T. NEWMAN,
U. S. Judge.

Filing: Filed in clerk's office 2nd day of May, 1896.

O. C. FULLER, *Clerk,*
By GEO. S. BARNARD, *Deputy.*

Commissioner's Report of Sale.

Decree from the circuit court of the United States for the northern district of Georgia.

J. J. ROBINSON, Trustee,
vs.
ALABAMA & GEORGIA MANUFACTURING CO. ET AL. } No. 360.

To the honorable the circuit court of the United States for the northern district of Georgia:

As commissioner appointed by said court to sell the property of the defendant in the above-stated case, I beg leave to make the following report:

I advertised the property described in said decree once a week for four weeks in the Daily Constitution, a newspaper published in Atlanta, and in the Hamilton Journal, a newspaper published in Hamilton, in Harris county, Georgia, prior to offering said property for sale. And on the first Tuesday in May, 1896, I sold said

property at public outcry before the court-house door in the town of Hamilton, in Harris county, in said district, it being the county in which said property is located. When the same was bid off by L. Lanier, representing a majority of the bondholders of said defendant company, at and for the sum of $66,000.00. The said purchaser paid over to me at the time and place of the sale the sum of five thousand dollars, as required by the terms of the decree for which he holds my receipt.

23 The cost for advertising the property in the Atlanta Constitution amounted to $25.00, and in the Hamilton Journal to $21.97, making a total of $46.97. My fee for selling the property by contract is $200.00, making a total expense of $246.97, which amounts I have paid, leaving in my hands subject to the order of court the balance, to wit, amount collected from sale $5,000.00, total expense of sale $246.97, amount on hand $4,753.03, amount in hands of purchaser uncollected, $61,000.00.

I attach hereto a copy of the advertisement and the bills for advertising same which I have paid.

All of which is respectfully submitted.

May 7th, 1896.

SAMUEL C. DUNLAP,
Commissioner.

Filing: Filed in office May 7th, 1896.

O. C. FULLER, *Clerk.*

Petition of Purchaser for Confirmation of Sale.

United States Circuit Court, Northern District of Georgia.

Final decree.

J. J. ROBINSON, Trustee,
vs.
ALABAMA & GEORGIA MANUFACTURING CO. *et al.* } No. 360. In Equity.

To the judges of said circuit court:

The petition of L. Lanier shows that the property described in said decree was exposed to sale on the first Tuesday in May, 1896, before the court-house door in the town of Hamilton, Ga., by Sam'l C. Dunlap, commissioner, appointed for that purpose, after due advertisement in conformity with said decree. That your petitioner for and on behalf of the holders of the bonds of the Alabama & Georgia Manufacturing Company bid off said property at and for the sum of 66,000 dollars. That he paid into the hands of said commissioner on the spot the sum of 5,000 dollars, as in said decree provided for. Petitioner is ready to surrender the bonds of said company in payment of the balance of the purchase-money on confirmation of the sale, all of the bonds being legally or equitably the property of your petitioner and his associates and under their control.

Wherefore your petitioner prays that defendants show cause why said sale should not in all respects be confirmed and the
24 commissioner be directed to make deed to the property. And your petitioner will ever pray, &c.

L. LANIER,
By DORSEY, BREWSTER & HOWELL AND
B. F. ABBOTT, *Solicitors.*

Order: It is ordered that defendants show cause before me on Saturday, the 30th instant, why the prayer of the foregoing petition should not be granted. Let service on defendants be perfected by serving counsel of record in the case.

This May 27th, 1896.

WM. T. NEWMAN,
U. S. Judge.

Due and legal service of the above and foregoing petition and order acknowledged. Copy waived. This May 27th, 1896.

W. R. HAMMOND,
JOHN M. CHILTON,
ALLEN FORT,
JOHN C. REED,
Solicitors for Defendants.

Filed in clerk's office 27th day of May, 1896.

O. C. FULLER, *Clerk.*

Answer to Petition for Confirmation of Sale.

In United States Circuit Court, Northern District of Georgia.

J. J. ROBINSON, Trustee, &c.,
vs.
ALABAMA & GEORGIA MANUFACTURING CO. *et al.* } No. 360. In Equity.

Answer of the Huguley Manufacturing Co. Petition of L. Lanier *et al.* for order of confirmation.

In response to the rule to show cause why said sale should not be confirmed, this respondent, for cause why said sale should not be confirmed, shows as follows:

This respondent is the real owner of said property, and the real party in interest as defendant in the foreclosure proceedings. The foreclosure proceedings deprived this respondent of the power to raise the money to pay off the bonded indebtedness, and it
25 has been totally unable to do so ever since the litigation has commenced. Respondent has a good and valid claim against the bondholders, who were the purchasers at the original sale, for the rents and profits of said property, for over three and two-third-years, which amounts to one hundred and fifty thousand dollars, or a larger sum.

When the mandate in the circuit court of appeals was filed in the clerk's office at this court, this respondent moved at once to have an inquiry made before a master as to the amount of this respondent's said claim. This court appointed a special master on respondent's said application, to hear evidence on this question and report to this court the amount of respondent's claim. At the same time this court ordered a sale of said property on the first Tuesday in May, 1896, under a decree of foreclosure. In the meantime this respondent did all in its power to press to a final hearing and determination the question so referred to the special master, but was unable for various causes, and without any fault on the part of respondent, to get the matter finally disposed of before the day of sale had arrived. The respondent had proceeded far enough to make it certain that it was entitled to recover a very large amount of money out of the said petitioners, who were the purchasers and holders of said property under the former decree. Respondent states to the court that the evidence already introduced before the special master would authorize and require a finding of over thirty-five thousand dollars a year, as the amount that should have been earned by said petitioners out of said property, during the period of time they held it, which was over three and two-third- years. Respondent further states to the court that the evidence already introduced before the special master would fully justify recovery of more than twenty-five thousand dollars for damage done to said property on account of repairs and keeping up the same.

Respondent has shown that the roof was tight, and the machinery and property all in good repair, when said property was turned over to said purchasers under the first decree, and that now the roof is full of large holes, and the water pours down over the machinery, so much so that the purchasers have tried to protect it by spreading numerous tarpaulins over it, and that the machinery, and especially the cards, have all been damaged from this and other causes, which could have been prevented by the exercise of ordinary diligence on the part of the petitioners.

These facts have been shown by numerous witnesses, who have been sworn, and testified before the special master, and especially by the testimony of O. B. Tilton, superintendent of the Exposition cotton mills, of Atlanta, Ga.; Logan Owen, superintendent of
26 the Bibb Manufacturing Co., of Macon, Ga.; John H. Nolan, J. T. Frazier and J. H. Jones.

Respondent here produces to the court the testimony of these witnesses, certified by the special master, showing that this respondent has a very large and substantial claim against said petitioners, and submits on the same, and asks this court to consider the same in determining the rights of this respondent herein.

Respondent represents to the court that there was only one bid made at said sale, and the property brought a price far below its real value. Respondent desired to bid at said sale, but was unable to do so because it had no money or property of any kind excepting said property, and was wholly without means to do so. But respondent can and will bid on said property when its said claim

against the said petitioners shall be fixed and determined, because it will then be able to do so, because its claim is very large and substantial one, and this court will doubtless give it the right to bid on the basis of said claim, and only require it to pay the excess, if any, should it become a successful bidder at said sale.

Said property is worth, at a low estimate, two hundred thousand dollars, as respondent is abundantly able to show, and respondent asks the court to allow it to offer proof to that effect. It sold for less than one-third that amount.

If the court will set aside this sale, and allow respondent said claim to be determined before said property shall be sold again, this respondent will purchase said property if it has to pay two hundred thousand dollars for the same. It is a very valuable property, and respondent has a very large and valuable claim against it, and it only asks to be allowed to come into fair competition, in bidding for the property, with the bondholders, who have had possession of the mortgaged property for over three and two-third- years.

Respondent respectfully submits to the court that while its claim is being determined by the special master appointed by this court, and until the amount due to it by the mortgages shall be determined, especially since the cause has progressed far enough to show that respondent's claim is so large and valuable, that there should be no confirmation of the sale that has been made, and that the same should be set aside, and respondent's claim ascertained and fixed before the final sale of said property.

Respondent therefore prays that the sale be not confirmed, but be set aside.

If the court should refuse this prayer, then respondent prays that the sale shall be confirmed only on condition that the said purchasers shall be required to pay into this court the full pur-
27 chase price bid by them for said property, or so much thereof as will be sufficient to satisfy respondent's claim as hereinbefore set forth, when the same shall be finally ascertained and adjudicated by this court, and that the court incorporate in the decree of confirmation, if it shall confirm said sale, an order or provision to the effect, if the said purchasers should fail to pay into court such amount as may hereafter be determined [illegible] his court to be due to respondents under said proceedings now be[illegible]ad before the special master, that said sale shall be set aside and sa[illegible] property resold, or such other order, direction and decree be given by this court in reference to the same, as to justice shall appertain.

J. M. CHILTON,
W. R. HAMMOND,
BIGBY, REED & BERRY,
ALLEN FORT,
Solicitors for Respondent.

UNITED STATES OF AMERICA,
State of Georgia, Fulton County.

In person came before the undersigned, William T. Huguley, who being sworn, says, that he is the principal stockholder of The Hugu-

ley Manufacturing Company, this respondent, owning more than 50 per cent. of said stock, and that the last president of said company, D. Jannopoulo, lives in the State of Missouri, and is inaccessible to respondent, and refuses and fails to co-operate with respondent in the conduct of said cause, having only a very small interest in the same; and deponent says the facts stated in the foregoing answer are true of deponent's own knowledge.

WM. T. HUGULEY.

Sworn to and subscribed before me this 25th of June, 1896.

GEO. S. BARNARD,
Deputy Clerk, U. S. Circuit Court.

Filing: Filed in clerk's office June 25th, 1896.

O. C. FULLER, *Clerk*,
By GEO. S. BARNARD,
Deputy Clerk.

Decree Confirming Sale.

In the Circuit Court of the United States for the Northern District of Georgia.

28 J. J. ROBINSON, Trustee, &c., *vs.* ALABAMA & GEORGIA MANUFACTURING COMPANY *et al.* } No. 360. In Equity.

This cause comes on further to be heard on the report of sale made by Samuel Dunlap, Esq., the commissioner appointed by the court to make sale of the property described in the final decree, and upon the petition of L. Lanier, trustee, etc., praying a confirmation of said sale, and upon the objections of the Huguley Manufacturing Company, filed to said last-named petition and the evidence cited therein. Upon consideration, it is ordered, adjudged and decreed:

1. That said objections of the Huguley Manufacturing Company be, and the same are, hereby overruled.

2. It appearing to the court from the report of said commissioner, and from the petition of said Lanier, that said property was exposed for sale at the time and place specified in the decree at public outcry, and it further appearing that the provisions and directions of said decree were in all respects complied with, and that the property was knocked down to L. Lanier, trustee, for the holders of the bonds of the Alabama & Georgia Manufacturing Company, at and for the sum of $66,000.00, that being the highest and best bid therefor.

It is ordered, adjudged and decreed that said sale be, and the same is, hereby confirmed in all respects, and that said Samuel C. Dunlap, as such commissioner, be and he is hereby authorized and directed to convey to said purchasers named, all and singular the property and the property rights of every description described

said decree, upon the purchasers complying with the terms of said sale.

And it appearing that the amount for principal and interest due on the bonds of said company is largely in excess of the amount of said bid of $66,000.00, the proper application of credits on said bonds arising from the proceeds of said sale, including cash paid into the hands of said commissioner, is reserved for further adjudication and direction in the cause.

It is further decreed that all questions of costs, expenses and counsel fees arising in the course of the litigation be likewise reserved for future action and decision of the court.

3. An order of reference having heretofore been entered in this cause directing Thomas B. Felder, Esq., to ascertain and report to the court certain claims for rents, profits, wastes and conversions in respect to the said property, and said investigation now being in progress before said special master it is ordered, adjudged and decreed, that should the said accounting finally result in a judg-
29 ment in favor of the Huguley Manufacturing Company, then such judgment, for any amount thereof in excess of any deficiency due by the defendants to the complainant in the foreclosure proceedings shall, for such excess be and remain a lien upon said property in favor of the Huguley Manufacturing Company, as against the purchasers at said sale or any persons holding under them.

And the court retains and reserves the right to seize and order a sale of said property for the purpose of satisfying any such balance so found to be due as hereinbefore set out, and the title shall be made by said commissioner to the purchaser subject to this provision.

This June 25th, 1896.

WM. T. NEWMAN,
U. S. Judge.

Filing: Filed in clerk's office 25th day of June, 1896.
O. C. FULLER, *Clerk.*

Report of Special Master.

In the Circuit Court of the United States for the Northern District of Georgia.

J. J. ROBINSON, Trustee,
vs.
ALABAMA & GEORGIA MANUFACTURING COMPANY ET AL.

Bill to foreclose mortgage.

To the Honorable Wm. T. Newman, United States judge:

The undersigned, in pursuance of a decretal order of the circuit court of the United States for the northern district of Georgia, pronounced on the 16th day of March, in the year 1896, in a cause in chancery in the said court depending between J. J. Robinson, trustee,

vs. The Alabama & Georgia Manufacturing Company *et al.*, and The Huguley Manufacturing Company, intervener, the original order being hereto annexed, having given due notice to the parties concerned, as will appear by the notice herewith returned, proceeded on the 30th day of March, 1896, to execute the said order; and the proceedings having been thenceforward regularly adjourned from time to time, and being at length completed the result is herewith respectfully submitted.

The undersigned, in taking an accounting of the proper receipts and disbursements incident to the custody and operation of the mortgaged property, and of the rents and profits earned or that should have been earned since its delivery to the purchasers under the former sale; and to ascertain whether there has been any conversion of the property connected with said property, and the amount and value of the same; as to whether there has been any waste or damage to the property, and as to whether the same is the result of ordinary wear and tear, and as to the liability of the holders of the property therefor, found it necessary to have numerous sittings, covering a period of about sixteen months, the argument of counsel alone consuming about a week, and the oral testimony, as written out by the stenographer, making some eighteen hundred pages of closely written matter, and a large amount of books, documents and papers being introduced by the respective parties.

Since the completion of the argument in the cause, the undersigned has devoted about two months to a careful examination of the evidence, both oral and documentary, and consideration of the questions of law involved.

During the progress of the cause, learned counsel on both sides, raised numerous objections to the admissibility of testimony and invoked at the hands of the undersigned numerous rulings, and while the undersigned is persuaded that some errors have been committed by him, he is equally persuaded that these were not upon the controlling issues of the case.

Matters to be determined.

Under the said order of reference the matters to be determined by the undersigned are:

(1.) Whether there has been any waste or damage to the property, and whether the same is the result of ordinary wear and tear, and as to the liability of the holders of the property therefor.

(2.) Whether there has been any conversion of the property connected with said property, and the amount and value of the same.

(3.) The proper receipts and disbursements incident to the custody and operation of the mortgaged property, and of the rents and profits earned or that should have been earned since its delivery to the purchasers under the former sale.

The Galeton cotton mills, having obtained possession of the property under an erroneous decree of foreclosure, which decree was appealed from and reversed, the main issue between the parties is as to the rule of liability which should be applied under these circum-

stances. In the opinion of the undersigned, the Galeton
31 cotton mills, being a creditor in possession under an erroneous decree of foreclosure, is chargeable only with the profits actually earned, or those which would have been earned, but for its own wilful default.

See 78 Ga. 597.
1 Ala. Rep. 496.
Pomeroy's Eq. Jurisprudence, secs. 1216 and '17.
Snell's Equity, page 308.
Coot on Mortgages, 18th Law Library, top page 152, marg. 305.
11 Jones on Mortgages, 1123.
26 Gratton 61.
78 New York, 556.
English Notes to Thornburg *vs.* Baker, 2nd White & Tudor Leading Cases, part second, 1979, top 1077.

No wilful default.

The evidence does not show that the Galeton cotton mills has been guilty of any wilful default in the management of the property or in earning profits, but on the contrary shows that the company has made the most that could be made out of the property in the condition it was in when they received it.

Roof.

(1.) In regard to the waste and damage alleged to have occurred to the property during its illegal custody by the Galeton cotton mills, the movant introduced a large amount of evidence about the failure to repair the roof of the mill building, and tending to show neglect in keeping up the main dam which formed the water power for the operation of the mill; and some evidence tending to show neglect as to specific parts of the machinery used in the mill. In addition to hearing evidence from both sides on these points, the undersigned personally inspected the premises with the consent of all parties. In regard to the roof, the evidence shows that it was somewhat leaky at the time the property went into the possession of the Galeton cotton mills. The roof being old and of improper construction, it was hardly practicable to efficiently repair it, but what was really needed was an entirely new roof, which would require the outlay of a considerable sum of money. It cannot well be contended that a creditor in possession under the circumstances shown in this case, is under the duty of making expensive improvement-permanent in their nature which would ultimately inure to the benefit of the debtor. The evidence shows further that the Galeton
32 cotton mills used the temporary device of protecting the machinery from the water trickling through the roof, by spreading tarpaulins over the machinery, this device having previously been used by the Huguley Manufacturing Company. While the evidence indicates that during the incumbency of the Galeton cotton mills the condition of the roof was somewhat worse, it does not show that this interfered with the operation of the mill, or that it dam-

aged the machinery to any special extent, the movant having totally failed to adduce evidence establishing any specific amount of damage from this cause. The undersigned is further of the opinion that the dilapidated condition of the roof resulted from ordinary wear and tear only.

Floor.

Complaint is made by the movant that the Galeton cotton mills failed to properly care for the floor of the building, allowing the floor in the main building, which had sagged in the center, to remain in that condition and the machinery thereby to be out of level, and that the boards forming the floor had been abused and become much worn in places, and that the repairs needed in this respect had not been made. The evidence shows that the sagging of the floors in the main building had occurred some time before the Galeton cotton mills took possession, and an effort had been made to level it by jacking it up, but owing to the danger of spreading the walls it had not been brought up quite level, but the machinery itself was levelled up. It is, perhaps, true, that the floor became somewhat more depressed in the center after the Galeton cotton mills took possession, but it is not shown that this defect could have been remedied or that the failure to remedy it was wilful neglect on the part of the Galeton cotton mills, or that the defect damaged the machinery or interferred with its operation to any appreciable extent. The same may be said of the alleged failure to put in new boards where the old ones had become worn. These things are properly attributable to ordinary wear and tear, and not to negligence or abuse, and the evidence does not furnish any ground for any finding against the Galeton cotton mills on account of any defect in the floors.

Dam.

In regard to alleged neglect in reference to keeping up the dam, the conclusion of the undersigned is that the dam, during the occupancy of the Galeton cotton mills, was in about the same condition as it had previously been, and that the Galeton cotton mills
33 is not chargeable with any wilful neglect in keeping it up or repairing it. If there was any depreciation in *in* the efficiency of the dam, it was small and attributable to ordinary wear and tear.

Machinery.

The movant claimed that the Galeton cotton mills had been guilty of improper care with respect to the machinery, and that among other things, certain of the machines had been robbed of their parts to supply missing or defective parts on other machines. The evidence on this point, as well as the others, was conflicting, but the undersigned is of the opinion that the practice of taking parts from some of the older machinery to supply parts on other machines had commenced before the Galeton cotton mills went into possession, and further, that the machines thus deprived of their parts were old and practically worn out and incapable of being operated at a profit. Indeed all the machinery in the mill was shown to have

declined in value and its utility and productive power greatly reduced by reason of its advanced age.

A number of witnesses were examined as to the average life of cotton machinery, and while their estimates varied, it is safe to say that such machinery cannot be profitably operated, even when properly kept up and repaired, for more than fifteen or twenty years at the outside. This mill was constructed about the year 1869, and some of the machinery put in at that time is still there and in operation. Some of the older machinery has been displaced by reason of having ceased to be capable of running at a profit. As to about forty-five or fifty looms which had once been in operation, it was claimed by the movant that they had been dismantled and put off in the basement of the mill, when the same should have been continued in operation; but the evidence on this point shows that these looms were taken out and replaced by new looms before the Galeton cotton mills took possession. There is no machinery in the mill of very recent date, the latest having been purchased in 1881 or 1882. In a word, the buildings, dams and machinery in this mill are all old, and like everything else material, have been unable to resist the empire of decay. Hence the undersigned says, that there has been no waste or damage to the property beyond ordinary wear and tear resulting from its use, covering a period of almost a quarter of a century.

Conversion of property.

(2.) The next question is "whether there has been any conver-
34 sion of the property connected with said property, and the amount and value of the same." This, no doubt, refers to the claim made by the movant that certain movable property went into the possession of the Galeton cotton mills, and was used or converted by it, which property was not included in the decree of foreclosure, or the sale, but belonged to the movant. The evidence shows that there was in the office and in the mill a quantity of supplies and findings belonging to the Huguley Manufacturing Company, which were there for the purpose of being used as needed in the operation of the mill, but which had never been called into requisition. There is no dispute that these supplies and findings were used up by the Galeton cotton mills in its operation of the mill during the period of accounting. Their value is shown to be $2,500.00, and the movant is entitled to a finding for this amount, together with interest thereon from the date of said conversion, September 6th, 1892, at the rate of seven per cent. per annum, which amounts to $891.04.

The evidence does not show that any other property belonging to the Huguley Manufacturing Company was converted to the use of the respondent.

Receipts and Disbursements.

Interest on $16,600.

(3.) In regard to the proper receipts and disbursements incident to the custody and operation of the mortgaged property, and of the

rents and profits earned or that should have been earned since delivery to the purchasers under the former sale, the evidence closes that in the fiscal operation of the mill, interest was char on the sum of $16,600.00, and that this charge was purely a trary; the owners of the Galeton cotton mills simply assuming the same was worth the sum of $65,000.00, being the price bid the sale of the property, plus $16,600.00. The interest thus char is unauthorized, and the respondent is properly chargeable th with. The total interest on this sum (not counting any compou ing) is $4,773.42, with interest from April 30th, 1896, to date at rate of 7 per cent. per annum, which amounts to $481.72, wh sums undersigned allows in favor of the intervener.

Interest on bonded debt.

The evidence also discloses that respondent charged from time time as a part of the expenses incurred in the operat
35 of the mill interest on the mortgage debt amounting in aggregate to $17,812.00. This charge is manifestly impro because the movant was being charged and liable for interest at contract rate on the bonded debt which was erroneously foreclo on the property. To allow the charge of interest on the bon debt made by the Galeton cotton mills, at the same time that movant is held liable for interest on its bonded debt would be require the movant to pay double interest, which would be unj and illegal. Therefore, the movant is entitled to a finding in favor on this ground for the amount of $17,812.00 with inter from April 30th, to date, at the rate of 7 per cent. per annum, wh amounts to $1,797.48.

Sundry charges.

It appears from the testimony in the case that divers charges w made by the Galeton cotton mills on account of attorneys' fees, e as follows to wit:

Fees and expenses of Abbott, attorney	$554.
L. M. Harris	2.
Recording deed	5.
Charter	10.
Fees of clerk of the court of appeals	20.
Lanier's expenses to New Orleans	29.
Smith, stenographer	20.
Legal fees as per account	25.
J. W. Brown, expenses to mill	12.
Robinson & Dukes, attorneys	50.
Making in the aggregate the sum of	$729.
And int. charged on same to Apr. 30th, '96	131.
	$860.

In the opinion of the undersigned these are not the proper charges and movant is entitled to a finding in its favor on this ground, for the said sum of $860.39 principal, and interest from April 30th, 1896, to this date, at the rate of 7 % per annum, which amounts to $86.77. See schedule.

Expenses of directors.

It further appears from the evidence in the case that the expenses of the directors of the Galeton cotton mills, traveling from Boston to West Point, amounting in the aggregate to $732.85, *was*
36 charged to the expense account. It is the opinion of the undersigned that so much of said account as was incurred by the treasurer in traveling to and from the mill which amounted to $366.42, was a proper charge, but that the remainder, to wit: $366.43, was not a proper charge and therefore movant is entitled to a finding on this score for the said sum of $366.43 principal, and the further sum of $24.62 interest charged on above sum to April 30/96, making $391.05, and 7 % interest thereon from Apr. 30th, 1896, to date, which amounts to $39.49.

Waste.

One of the contentions of the movant is that in this accounting respondent has failed to account for the total amount of waste produced by the mill during the period of time that they operated the same. The evidence discloses that the whole amount of the waste produced during the period in question was 532,282 pounds. Of this respondent accounted for 212,695, leaving unaccounted for 319,587. This at two cents per pound would make the sum of $6,391.74, which, in the opinion of the undersigned, justifies the finding in favor of movant and against respondent for said sum of $6,391.74. Interest is allowed on this sum at the rate of 7 % per annum from the 30th day of July, 1894, to date, this calculation being based on the average time the mill was operated by defendant; the amount of interest allowed being $1,461.58.

Insurance.

It appears that respondent kept the buildings, etc., insured, loss, if any, payable to the Galeton cotton mills, for the sum of $75,000 at the rate of one per cent. per annum. If the buildings had been consumed by fire the proceeds thereof would not have inured in anywise to the benefit of the mortgagors. There seems to have been no contract wherein the Galeton cotton mills was authorized to take out this insurance and charge the cost of it to the movant. This being true, it is the opinion of the undersigned that respondent had no right to charge to operating expenses insurance premium, and I therefore find in favor of the movant against respondent on this ground the sum of $3,502.52 principal, and interest from the 30th day of April, 1896, at the rate of 7 % per annum, making $353.45.

See 2nd Jones on Mortgages, section 1135.

Interest on working capital.

When the respondent went into the possession of the mil
37 it had no working capital, although a working capital wa
required. The amount so required was variously estimate
by the witnesses; some placing it at $20,000, some at $25,000 an
some at $30,000, and upwards. One of the witnesses stated that te
dollars per day interest on this account, being not only amply suffi
cient, but in his opinion excessive, respondent charged to operatin
expenses as interest on working capital for the period of time sai
mill was operated, $17,196.24.

The undersigned has caused to be made an abstract of the treas
urer's account and interest calculated thereon, which shows that th
interest on the amount of capital actually employed, amounts t
$14,021.47. The difference between this sum and the sum charge
is $3,174.77, and this amount the undersigned finds in favor o
movant, besides interest at the rate of 7 % per annum from the 30t
day of April, 1896, which amounts to $320.41.

Interest on datings.

Movant contended, with much earnestness and some plausibility
that N. Boynton & Co., the sales agents of the Galeton cotton mills
in their course of dealing with the purchasers of the product of sai
mill pursued a plan known in commercial parlance as "datings,"
whereby goods were sold and delivered and the bills made to bear
date in the future, and that the mill was charged with interest o
these datings exceeding the usual cash discount of 2 %, which amoun
of interest so charged against this mill amounted all together t
$14,108.35. The undersigned is free to confess that in dealing wit
this phase of the case he was much perplexed. There was evidenc
to the effect that it was customary in this business to allow the in
terest on such datings in addition to the cash discount, whenever
purchaser availed himself of the privilege of paying cash, instead o
taking advantage of the dating. Thus it will be seen that the sell
ing agents did not receive the interest on these datings, but that i
was a benefit, by way of additional discount, accorded to purchaser
as an inducement to prompt settlement of their accounts. Indeed
the custom of the trade being to allow such interest, in addition t
the cash discount, it became a part of the contract of sale so as to en
title the purchaser to the customary allowance of interest. Thus i
would not be optional with the sales agents to grant or refuse interes
discount after the dating had been allowed. And it was no doub
necessary to allow datings in order to effect sales in the face of com
petition. Probably it was also to the interest of the mill, not only
in the way of meeting competition, but also in the advantag
38 of making immediate delivery on future orders, thus saving
storage and insurance on goods. In other words, the account
sales rendered by N. Boynton & Company, containing these interes
charges correctly represents the actual amounts realized by them fo
the mills from sales of goods, and in the absence of any evidence o
wilful default in not realizing more on such sales, the Galeton cotto

mills cannot be charged with more than the amounts actually realized. There was some evidence to the effect that some of the datings were unusually long and that the interest allowed on datings was too high, but there was not enough of this evidence to show that these charges were improper under the rule which has been stated as determining the liability of the respondents to account to the movant. Therefore, the conclusion of the undersigned is, that the charges for interest on datings contained in the account sales by N. Boynton & Company are proper.

Commissions to selling agents.

It is further contended, on behalf of the movant, that as N. Boynton & Company were financially interested in the Galeton cotton mills, they had no right to handle the products of the mill and charge agents' commissions for their services. It was also claimed that their charges were excessive. In the opinion of the undersigned, it is not illegal for persons interested in the profit of a mill to act as selling agents and receive commissions for handling the product of the mill. As a general thing, supposing the agents to be honest, it would be better to have one who was interested in the business, as he would be more likely to attend to it properly and diligently. The evidence does not show that N. Boynton & Company have made improper or excessive charges by way of commissions on sales.

As regards the contention that the commissions charged were excessive, a careful examination of the evidence adduced on this point convinces the undersigned that the commissions charged for handling the products of the mill were not excessive, especially in view of the fact that N. Boynton & Company guaranteed the payment by their customers of all sums due, thereby entailing no loss upon the mill because of bad debts.

This being so, it is proper that the Galeton cotton mills in accounting to the movant should be allowed credit for the sums paid to N. Boynton & Company as commissions on sales and the same is hereby allowed.

Alleged shortage on cotton.

It was further claimed by the movant that a large amount
39 of cotton which should have been accounted for was not accounted for. It was sought to show this by a comparison of the total amount of cotton bought for the mill with the amount which the books show had been opened for the purpose of being manufactured. The evidence shows, however, that the Galeton cotton mills at times sold some of the cotton on hand, which presumably was not needed at the time and that the proceeds of these sales have been credited on the treasurer's accounts. While this claim does not seem to have been insisted on, it is enough to say that the evidence does not authorize any finding against the Galeton cotton mills for any such shortage.

Goods unsold.

It was further claimed by the movant that the item of goods on hand unsold, which appears as a charge against the Galeton cotton mills, was not as large as it should be, but that the value of these goods on hand was underestimated. The evidence does not support this contention, but the conclusion of the undersigned is, that the valuation of $33,737.28 put on these goods covers their market value at the time.

Charges for cotton.

It is also insisted by movant, that the charges for cotton purchased for the Galeton cotton mills were higher than the ruling market prices at the dates of purchase, and that the movant is entitled to a credit for the difference between the price paid for cotton and the price for which it could have been procured. On this point some of the witnesses testified that the Galeton cotton mills always paid the market prices. The cotton for this mill was purchased by W. C. & L. Lanier, who also did the buying for several other mills during the same period of time. Mr. Lanier testified that the cotton was charged to the Galeton cotton mills at the same prices as to the other mills, the same being the actual cost price of the cotton. He admitted that in a few occasional instances cotton was furnished to the mill "to be priced," but this was not the custom, and it was done in such comparatively few instances and comparatively small purchases that it does not appear that the mills sustained loss thereby to any appreciable degree. To support the alleged overcharge on cotton, the widest latitude was allowed movant in the introduction of testimony and a number of witnesses were examined as to the average market prices of various grades of cotton in Atlanta, La Grange, Newman and West Point. In addition to this, the
40 cotton books of several large firms in West Point, who dealt in cotton, were introduced. It does not appear from this mass of testimony that the Galeton cotton mills have paid more for their cotton than it could have been produced for at the time it was bought. The movant undertakes to establish such an inference by a comparison of the prices paid with certain average prices of cotton for specified months. It would seem that the proper way to show such overcharges, if they existed, would be to show the date and amount of each purchase and the market price of cotton in West Point on those days. On the whole, the undersigned is of opinion that the claim of overcharge on cotton purchased by the Galeton cotton mills is not made out by the evidence, and therefore said claim is disallowed.

Prices of goods sold.

It was further claimed by the movant, that the products of the mill were sold at inadequate prices. This mill was engaged in the manufacture of cotton ducks, known as 7 oz., 8 oz., and 10 oz. duck respectively. The movant introduced a number of witnesses who testified to the average prices of these classes of goods, and seeks to

show, by a comparison of the average prices testified to by these witnesses with the average prices realized by the Galeton cotton mills, that the prices realized were far below what they should have been. It would seem that in impeaching the account of sales rendered by the respondent, the movant ought to show that the goods at the time they were sold brought less than the market price of the same grade of goods at the time and place of sale, and that the failure to realize the best price obtainable was by the willful default of the respondent. Neither of these propositions is shown by the evidence. While the evidence for the movant, in the shape in which it is presented, may suggest an inference that the goods sold for the account of the Galeton cotton mills ought to have brought better prices, still the evidence strongly indicates that the product of this mill was not equal in quality to those goods to which the market price applies. Furthermore, so long as the selling agents acted in good faith, and sold the products of the mill at fair prices, not necessarily the best prices, the movant would have no cause to complain. The undersigned is of opinion, that the selling agents of this mill realized a good price for its products, and perhaps as good prices as could have been gotten under the circumstances, and therefore the finding must be against the claim of the movant that the prices realized for the goods produced by the mill were grossly insufficient.

Indeed, in regard to the claim of overvaluation of cotton bought, and undervaluation of goods sold, the undersigned thinks that the movant must stand by the actual results until he can show that those results are materially different from what they should have been, and that they were brought about intentionally or by negligence so gross as to amount to wilful default.

Stoppage of mill.

It is also suggested in behalf of the movant, that he is entitled to finding for the amount of profit which would have been earned by operating the mill during a period of thirty days, estimated to have been lost by reason of broken pinions to the water wheels, and other causes. This claim is disallowed, because the undersigned is of the opinion that accidents happen in the best regulated mills and are more liable to occur and cause stoppage in machinery that is old and worn than in a new mill. Indeed, the respondent seems to have done as well as could have been expected with the machinery and equipment at its command.

Stoppage of certain machinery.

Complaint is also made of a loss of product by reason of the failure to keep the full complement of machinery in operation during the whole of the period of accounting. On this point the evidence is that some of the machinery, or what had been machinery, which went into the possession of the Galeton cotton mills, was not fit for use, but that all of it which could be run at a profit and per-

haps some that could not, was employed constantly for the purpose of getting out the full product of the mill, except that occasionally a spinning frame or some other piece of machinery would be stopped for repairs, a thing which the evidence shows happens in all mills, and with greater frequency in mills that use old and run-down machinery. Therefore this claim is disallowed.

Rulings.

During the progress of the investigation, a number of rulings were invoked on the admissibility of testimony, but it is not considered material or profitable to notice in detail all of these rulings. Doubtless some errors were committed, but none that would affect the result or make it different from what it is. To go into a discussion of all the details in the testimony and rulings of the court, would needlessly lengthen this report without any compensating advantage.

42 Books and vouchers.

It was shown to the satisfaction of the undersigned, that the books introduced by the respondent, to wit, a journal and ledger, purporting to be the books of the original entry of the Galeton cotton mills, were not such, but the same appeared to be copies. Yet all the original vouchers, from which, no doubt, the original books of entry were made up, were brought into the court and tendered along with the said books. These vouchers were submitted to the inspection of the adverse party as well as to the court.

In dealing with these lengthy and complex accounts, the undersigned has undertaken to pass on all of the disputed items and clearly set forth the results of the evidence on these items. There are a great many items submitted in the accounts of the respondent about which no controversy arose, and for that reason no mention is made of them.

Summary.

The Galeton cotton mills show by their accounts, that during the three and two-third- years over which the accounting extends the net result of their operation of the mill is a loss of $4,654.60. To overcome this, however, there are items here found in favor of movant largely in excess of said sum. The following statement shows, in the opinion of the undersigned, the true state of the accounts, to wit:

43

		Interest from April 30th, '96, to date, 7 %.
Interest charged on $16,600	$4,773.42	481.72
Coupons on mortgage bonds	17,812.00	1,797.48
Insurance	3,502.52	353.45
Excess interest on balances	3,174.77	320.41
Directors' expenses (schedules)	366.43	
Interest charged on same to Apr. 30, 1896..	24.62	39.49
Sundry expenses (schedule)	729.35	
Interest charged on same to Apr. 30, 1896..	131.04	86.77
	30,514.15	3,079.32
Deduct loss as shown by books, April 30th, 1896	4,654.60	469.72
	25,859.55	2,609.60
Interest from April 30, 1896	2,609.60	
	28,469.15	28,469.15
Property converted Sept. 6, 1892	2,500.00	
Interest to Oct. 9, 1897 at 7 %	891.04	
		3,391.04
Waste not accounted for, 319,587 lbs. at 2c..	6,391.74	
Interest from July 3, 1894, (average date) to Oct. 9/97 at 7 %	1,461.58	
		7,853.32
Total award, with interest at 7 % to Oct. 9/97..		$39,713.51

And the said sum of $39,713.51 is awarded in favor of movant against the Galeton cotton mills.

Conclusion.

The undersigned does not understand the order of reference as requiring him to make the application of the credits found in favor of the movant to the balance of the debt owing by the movant, which was left after the movant was credited with the price which the property brought at the last sale. Probably the parties will 44 be able to agree as to the proper application of these credits on the decree, and in the event of their failing to do so, the same will be readily fixed by the court.

In conclusion the undersigned desires to say that in dealing with the voluminous and complicated matters of account, he found it necessary to invoke the aid of an impartial and disinterested expert accountant. The services of Mr. A. L. Waldo were secured, and the abstract of the treasurer's accounts prepared by him and verified by me is herewith submitted as a part of this report.

As a matter of simple justice to the accountant, it affords the

undersigned pleasure in stating that the work was performed with great skill, unusual accuracy and marked ability.

Respectfully submitted.

THOS. B. FELDER, JR.,
Special Master.

This October 9th, 1897.

Filing: Filed in clerk's office Nov. 2, 1897.
O. C. FULLER, *Clerk.*

Exceptions by Respondent to Report of Master.

In the Circuit Court of the United States for the Northern District of Georgia.

J. J. ROBINSON, Trustee,
vs.
ALABAMA & GEORGIA MANUFACTURING COMPANY ET AL.

Petition for accounting.

And now come the Galeton Cotton Mills and J. J. Robinson, trustee, and except to the report of the special master in the above-stated cause, and for ground of exception thereto, say:

First. Respondents say that the master erred as a matter of law in holding and deciding that respondents were not entitled to charge to operating expenses of the mill during the term by the above reference the money paid for premiums on fire-insurance policies, to wit, the sum of 3,502.52/100 dollars.

The undisputed evidence before the master shows that said sums were duly paid on fire-insurance premiums, and respondents say that the master erred in finding and in deciding that said sum
45 of 3,502.52/100 dollars principal, and 353.45/100 dollars interest on said principal were a valid charge in favor of the movants against said respondents.

Respondents say that the master should have found the said sum of 3,502.52/100 dollars, together with — dollars interest on the same as a valid and subsisting charge in favor of the respondents, as a part of the operating expenses of said mill during the time covered by said reference, and the failure to so find is error.

Second. Respondents say that the master erred as a matter of fact in finding, holding and deciding that movants were entitled to recover against respondents for 319,587 pounds of waste, at two cents a pound, making the sum of 6,391.74/100 dollars, with interest thereon, to wit, 1,461.58/100 dollars to October 9th, 1897.

Movants aver that the evidence shows that respondents accounted for all of the waste which came into *his* hands during the time covered by said references:

(*a.*) The account sales of the selling agents of the Galeton cotton mills, N. Boynton & Co., in Boston, show that they sold 212,695 pounds of waste, as found by the master.

(*b.*) The evidence in case as shown by fortnightly reports of the Galeton cotton mills show sales of bagging which do not appear on the statement of sales by said sales agents, amounting to 1,651.04/100 dollars, which at 2 cts. per pound would amount to 82,552 pounds.

(*c.*) The evidence shows that there were purchased 1,006 bales of cotton during the time covered by the said reference. Respondents say that on each of said bales there were six pounds of ties, which ties were used in baling manufactured goods, and the total weight of said ties is 66,000 pounds.

(*d.*) The evidence shows that waste consists in part of sand, dust and moats, which are utterly worthless, and respondents allege that fully three per cent. of the weight of the cotton bought consisted of such sand, dust, moats and refuse stuff, which waste, in that respect alone, amounts to 150,000 pounds.

(*e.*) The evidence shows that there is loss in weight on cotton on the 11,006 bales of cotton purchased, according to average loss on cotton bought and used for such purposes, amounting to 55,000 pounds.

Respondents allege that the master erred in holding and deciding that respondents had failed to account for 319,587 pounds of waste and in holding and deciding that the same was worth two cents a pound, and that it amounted to 6,391.74/100 dollars, and that the interest thereon to October 9th, 1897, was and is 1,461.58/100
46 dollars, and in deciding that said sums were a proper charge against respondents, and in not holding and deciding that respondent, The Galeton Cotton Mills had fully accounted for all the waste which came into its hands.

And movants say that the master erred in so finding and reporting said sums as a valid charge against respondents.

Third. Respondents say that the master erred as matter of fact in holding and deciding that movants were entitled to recover against this respondent, The Galeton Cotton Mills, for the property converted since September 6th, 1892, the sum of 2,500 dollars, with interest thereon to October 9th, 1897, in the sum of 891.04/100.

Respondent- says that the evidence fails to disclose what said property was and that its value was of the sum so found. And respondents aver that the master erred in so finding, and in not reporting in favor of respondents on said issue.

DORSEY, BREWSTER & HOWELL,
B. F. ABBOTT, *Sol. for Respondents.*

Exceptions overruled. This Nov. 2nd, 1897.

THOS. B. FELDER, JR.,
Special Master.

Filing: Filed in clerk's office Nov. 2, 1897.

O. C. FULLER, *Clerk.*

Exceptions of Interveners to Report of Master.

In the Circuit Court of the United States for the Northern District of Georgia.

J. J. ROBINSON, Trustee,
vs.
ALABAMA & GEORGIA MANUFACTURING COMPANY ET AL. } In Equity.

Exceptions by intervener to report of special master, Hon. Thomas B. Felder, Jr.

And now comes the intervener, the Huguley Manufacturing Company, having received notice from the special master, the Hon. T. B. Felder, of his report in said cause, and before the filing of said report, and excepts to the same and for cause of exception says that the special master erred:

1. In holding and ruling that the Galeton cotton mills, during the time of its occupancy and possession of the property in dispute, was only chargeable with the profits actually earned, or which would have been earned but for its wilful default.

The contention on the part of intervener was and is, that
47 the true rule of liability was, that the Galeton cotton mills was liable to intervener for such profits as would have been earned by the exercise of ordinary and reasonable diligence by the Galeton cotton mills.

2. In holding and ruling that the Galeton cotton mills, under the evidence introduced in the cause, was only liable for the profits actually earned by it, as shown by the evidence introduced on its own behalf; whereas, if the proper rule of diligence had been applied to the question of its liability, and the amount of same under the evidence in the cause, the finding of the special master would have been a much larger amount than it was, to wit: in addition to the sum of $39,713.51, already allowed, the further sum of $171,215.27, or a total sum of $210,928.78, would have been the finding of the master.

3. In holding and finding that the evidence shows that the Galeton cotton mills made the most that could have been made out of the property in the condition it was in when they received it.

4. In holding and finding that the amount of interest charged by the officers and agents of the Galeton cotton mills against the corporation, under the general charge of "balance interest on account," being $17,196.24, should only be reduced to $14,021.47, and allowing the last-named sum to stand as a charge against the Galeton cotton mills, in favor of their agent and treasurer, Horace S. Sears, and thus operate as charge against intervener in the accounting between it and the Galeton cotton mills; intervener claiming and contending that no evidence was furnished to the master on which he could allow the same, and that the only interest charged which could properly (be) allowed, was "interest on working capital," which the evidence showed would not exceed $30,000.00 prin-

cipal, and that interest on this sum, at 7 % per annum would only be $7,700.00, for the period of accounting. Intervener contends that an additional amount should have been allowed in its favor against the Galeton cotton mills, on this account of $6,321.47.

5. In holding and finding that the charges for interest on "datings," contained in the account of sales rendered by N. Boynton & Company to the Galeton cotton mills, to the amount, to wit, of $14,108.35, was a proper charge in favor of the Galeton cotton mills against the intervener.

Intervener contends that this amount so charged, should not have been allowed, nor any part of it, and that the whole amount of it should have been added to the amount found in favor of intervener against the Galeton cotton mills.

6. In holding and finding that there was no excess of "commissions," charged by N. Boynton & Company, the sales agents
48 of the Galeton cotton mills, on account of sales of duck and other product of the mills, said charge having been five (5%) on the gross sales, or $30,626.19 in the aggregate; whereas, intervener contends than no more than three and one-half (3½) per cent. should have been allowed as a credit to the Galeton cotton mills on account of such sales, or the gross sum of $21,438.33, which would make an additional amount of $9,187.86, which should have been found by the special master in favor of intervener against the Galeton cotton mills.

7. In holding and finding that no amount should be allowed to the intervener against the Galeton cotton mills on account of "shortage on cotton," or the difference in the amount of cotton bought and paid for by the Galeton cotton mills, and the amount actually opened and consumed by the mills, as shown by their own books, said amount being as follows.

Actual pounds of cotton bought and paid for.....	5,408,341 lbs.
Actual pounds of cotton opened and consumed.....	5,283,028 lbs.
Difference unaccounted for.....	125,313 lbs.

Intervener contends that there was no evidence showing that this cotton was accounted for and that the special master should have found in its favor against said Galeton cotton mills the value of the same, at 8¼ cents per lb., or $10,338.32, in the aggregate.

8. In holding and finding that the valuation of $33,737.28, credited by the Galeton cotton mills for goods on hand at the end of the period of accounting, was a correct valuation, and that no additional charge should be made against the Galeton cotton mills in favor of intervener on this account. Intervener claims and contends that the evidence shows clearly that the market value of the stock on hand at the end of the period of accounting was as follows:

273,050 lbs. duck on hand Ap'l 30, 1896:

Of which, in Boston, 117,832 lbs., 12½ cts.....	$14,729.00
Of which, in West Point, 155,218 lbs., 12½ cts.....	19,402.25
Fr't prepaid to Boston on former lot	707.00

Additional value on converted goods.....	850.00
Goods at mill, unbaled, 1,691 lbs., at 12½ cts.....	211.37
Cotton at mill, in process, 10,000 lbs., 12½ cts.....	1,250.00
Other stock, waste, &c., 24,207 lbs., 2 cts.....	484.14
Total net value as per testimony.....	$37,633.76
Deduct valuation as per defendant's estimate.....	33,737.28
Leaving a balance on this account of.....	$3,896.48

49 which should have been charged in favor of intervener against the Galeton cotton mills in addition to the amount allowed of $33,737.28.

9. Intervener claims and contends that the special master erred in refusing and failing to find the amount of $3,000.00, with interest, in favor of intervener against his defendant, which was shown by the evidence to be the value of the "belting" on hand at the close of the period of accounting, which belting, was shown by the evidence, to have been converted to its own use by the Galeton cotton mills; and further in failing and refusing to find in favor of the intervener and against the Galeton cotton mills, the sum of $658.25, with interest, being the value of the supplies and findings admitted by the defendants to have been on hand at the close of the period of accounting, as shown by the evidence.

10. In holding and finding that no amount should be allowed in favor of the intervener against the Galeton cotton mills on account of "overcharge on cotton," bought and charged against the Galeton cotton mills by W. C. & L. Lanier. Intervener claims and contends that the prices paid for cotton by the Galeton cotton mills were largely in excess of the market prices of cotton in West Point, as shown by the evidence; and this excess, for the period of accounting, amounted to the sum of $50,359.52, which amount should have been found in favor of intervener against the Galeton cotton mills. Under this head intervener makes the following specific claims:

(*a*.) The overcharge on 610,507 lbs. of cotton, from January 9 to May 4, 1893, was one and four-tenths cents per pound, making $8,547.09, which have been found in favor of intervener against the Galeton cotton mills; (*b*) the overcharge on 219,085 lbs. of cotton purchased during the month of June, 1893, was 1.476 cents per lb., or $3,233.69; which should have been found in favor of intervener against the Galeton cotton mills, etc.

Intervener does not confine its claim to these two specifications, but claims and contends that the evidence shows an overcharge for the whole period of accounting, as shown by the difference in the market prices of cotton, and the prices at which it was charged against the Galeton cotton mills, of $50,359.52, as stated above.

10 (*a*). In holding and finding that the intervener should have shown to the master the amount and date of each purchase made by the Galeton cotton mills, and the market prices of cotton on those days, when it was a matter entirely and exclusively within

the knowledge of the Galeton cotton mills and its officers and
50 agents to show the amount and date of each of these purchases, and when intervener had shown the dates when they were charged, and had shown, by abundant evidence, the market prices on those days.

Intervener claims and contends that it was not incumbent on it to show the dates and amounts of cotton bought by the agents of the Galeton cotton mills for the mills, but that this duty rested upon the defendants, and that no proof having been offered by the defendant- to show the dates and amounts of each of those purchases, the master should have taken the market prices at the dates when the cotton was charged on the cotton books of the Galeton cotton mills, and which were in evidence and charge the difference between these prices and the market prices against the defendant-, in favor of intervener, amounting to the said sum of $50,359.52.

11. In holding and finding that there was no liability on the part of the Galeton cotton mills to the intervener on account of its failure to sell the duck, manufactured by the mill, at the full market price of the same.

Intervener claims and contends that the product of the Galeton cotton mills was as good, or should have been as good, as the product of other competing mills, concerning which evidence was introduced before the master; and that the evidence shows, and the master should have found, that as much should have been realized per yard or per pound from the sale of the product of the Galeton cotton mills, as was realized, as shown by the evidence, for the product of the competing mills; or, in other words, the market prices for the ducks should have been realized, and that this was not done.

Intervener claims and contends that the evidence shows that the number of yards of the product sold, and the amount realized on same, as appearing on the account sales rendered by N. Boynton & Co., summarized, were as follows:

(*a*.) For 7 oz. and less than 8 oz., 1,944,638 yards, were returned at $127,497.76; whereas, intervener claims and contends that there should have been realized and returned according to the evidence, the sum of $145,445.98, showing a deficit of $17,951.22.

(*b*.) For 8 oz. and less than 9 oz., aggregating 4,510,140 yards, there is returned on account sales $286,195.04; whereas, intervener claims and contends, according to the evidence, there should have been realized and returned the sum of $389,495.51, showing a deficit of $53,300.47.

(*c*.) For 9 oz. and less than 11 oz., aggregating 2,245,301 yards, there is returned as per account sales, $197,731.71; whereas,
51 intervener claims and contends, under the evidence, there should have been realized and returned $221,121.25, showing a deficit of $25,389.54.

In other words, to sum up, for the 8,700,079 yards of product, so reported and sold, and returned, as per account sales, at $611,424.51, intervener claims and contends, under the evidence, that the Galeton cotton mills, or the agents representing same, should have realized

and returned the sum of $708,065.74; thus showing a deficit or undervaluation, to be accounted for, of the sum of $96,641.23.

Intervener claims and contends that there should have been a finding in favor of intervener against the Galeton cotton mills for this difference between the amount returned by N. Boynton & Co., and the true value of the same, as shown by the evidence, to wit: the sum of $96,641.23.

The foregoing does not include the $3,896.48, deficit in valuation as to the stock on hand unsold, as already shown, the two together aggregating, as the amount of total deficit and undervaluation, the sum of $100,537.71.

12. Intervener claims and contends that the special master erred in this: Counsel for intervener, when they were first offered, objected to the admission in evidence of the books of the Galeton cotton mills, to wit: the journal and ledger, on the grounds that they had not been shown to be the original books, or books of original entry of the mills, and intervener offered evidence that they were too fresh to have been original books, and had no check-marks upon them, such as books of original entry, in daily use, commonly have. The books were, at first, ruled in by the master. Afterwards, counsel for intervener offered further evidence, and showed that the "water marks" on the paper, of which the books were made, showed the date of "1894," whereas, the entries on the books purported to have commenced in 1892, and intervener renewed its motion to exclude the books on the introduction of this new evidence. The master then stated that he would exclude the books from evidence. But, nevertheless, the master, in making up his report, has used and relied upon these books, and has had them audited, in part, by A. L. Waldo, the expert accountant, employed by him, and has based his report upon the contents of these books.

Intervener claims and contends that these books should not have been used or considered by the master at all, in making up his report, but that the report should have been made up from the other evidence that was before the master, excluding from consideration entirely these books.

13. Intervener claims and contends that the special master erred in admitting, over the objection of counsel for intervener, the
52 testimony of L. Lanier, that the Galeton cotton mills, during the period of its operation, from September 6th, 1892, to May, 1896, made a net loss of $4,654.60; the objection to said testimony being that it was the result of a calculation, made by a person or persons other than the witness, from the books of the mills, and that the books were the best evidence of their contents, and of any loss or profit made or sustained by the mills. The books having been excluded by the master, as evidence, this testimony, showing the result of a calculation or estimate of profit and loss, as based upon receipts and expenditures, as shown by these books, should have been excluded from evidence and should not have been used by the master in making up his report, as correctly showing the result of the operation of the mills for the period of accounting.

Counsel for intervener claim and contend that this was a funda-

mental error that vitiates the entire finding of the special master, and that he should be directed by the court to reconsider the evidence and submit a new report in the case, excluding entirely from consideration the books which were excluded by him.

Attention is called to the fact that on page 37 of his report, where he makes the summary of the account, the master gives a credit to the Galeton cotton mills of this amount, in these words: "Deduct loss as shown by the books, April 30th, 1896, $4,654.60."

14. Intervener claims and contends that the special master erred in admitting and using, as original evidence, the accounts of sales made by N. Boynton & Co. to the Galeton cotton mills, and in using the same as being a correct report of sales made by N. Boynton & Company of the product of the mills, the testimony not having been sufficient, as intervener contends, to show that these account sales were correct, or that they showed correctly the receipts and disbursements made by N. Boynton & Co., on account of the sale of the product of the mills during the period of accounting.

Counsel for intervener did not object to these accounts of sale going in evidence, as showing, in connection with the testimony of L. Lanier, the amounts of money actually paid by N. Boynton & Co., to the Galeton cotton mills, but did object to their being used by the master, as correctly showing the amounts actually received for the mill products by N. Boynton & Co., there having been no sufficient nor independent evidence, as counsel for intervener contends, that they correctly represented the actual and proper receipts and disbursements on that account.

15. The master erred in not allowing to the intervener a
53 large sum, to wit: $25,000.00, for injury to the mill machinery during the period covered by this investigation. The evidence shows that the machinery, by not being kept in repair, and by reason of exposure to the weather, consequent upon the failure to repair the roof of the main building, was seriously damaged, to wit: in the sum above named.

Nov. 1, 1897.

J. M. CHILTON,
ALLEN FORT,
W. R. HAMMOND,
BIGBY, REED & BERRY,
Counsel for Intervener.

The above and foregoing exceptions overruled.
This Nov. 2d, 1897.

THOS. B. FELDER, JR.,
Special Master.

Filing: Filed in clerk's office Nov. 2d, 1897.

O. C. FULLER, *Clerk.*

In the Circuit Court of the United States for the Northern District of Georgia.

THE HUGULEY MANUFACTURING COMPANY and William T. Huguley, Movants,
vs.
THE GALETON COTTON MILLS ET AL., Respondents.
} Equity.

Intervention of the Huguley Manufacturing Company for accounting for rents, issues, and profits.

The greater part of the previous history of this case can be found in the opinions of the court in Robinson, trustee, *vs.* The Hugley Mfg. Co., *et al.*, 51 F. 268, 56 F. 690, 67 F. 189, 72nd F. 708.

After the last decision of the appellate court as reported in 72nd F. 708 *supra*, the property was sold under the last decree and bought by the same purchasers as at the former sale. Subsequently the following order was made:

"It is ordered that this case be referred to Thomas B. Felder, Esq., for the purpose of taking an accounting of the proper receipts and disbursements incident to the custody and operation of the mortgaged property, and of the rents and profits earned or that should have been earned since its delivery to the purchasers under the
54 former sale; and to ascertain whether there has been any conversion of the property, connected with said property, and the amount and value of the same; as to whether there has been any waste or damage to the property, and as to whether the same is the result of ordinary wear and tear, and as to the liability of the holders of the property therefor." "This March 16, 1896."

The report of the special master was filed October 9, 1897, so that the hearing before the special master occupied something like 18 months. Of course the hearing was at intervals as suited the convenience of counsel and the special master, and as the necessity for getting witnesses and testimony required.

The special master having filed his report, exceptions were made by both sides, and it is on these exceptions that the present hearing is had. The special master reported against the purchasers of the property $39,713.51, which was awarded in favor of the movants against the Galeton cotton mills. The exceptions need not at all be noticed in detail, as they can be embraced under a few general heads which, it is believed, will cover the entire subject-matter of the report and the exceptions.

Counsel for the movants claim that the special master evidently misunderstood the order of the court and put an incorcorrect construction thereon in that he was required to "take an account of the proper receipts and disbursements incident to the custody and operation of the mortgaged property, and of the rents and profits earned or that should have been earned since its delivery to the purchasers under the former sale." They contend that the effect of the order of the court was to determine in advance that the correct rule to be observed by the master was to ascertain what the property by good

management should have earned, as well as what it really did earn, during the period in question. My own construction of this order would be that its meaning was that the special master should ascertain the proper receipts and disbursements incident to the operation of the property, if he should find that it had been operated or what it should have earned in the event it had not been operated.

The special master, in his report states the following to be the rule which he adopted in ascertaining the amount for which the holders of the property should be held liable:

"The Galeton cotton mills, having obtained possession of the property under an erroneous decree of foreclosure, which decree was appealed from and reversed, the main issue between the parties is as to the rule of liability which should be applied under these circumstances. In the opinion of the undersigned, the Galeton cotton mills, being a creditor in possession under an erroneous decree of
55 foreclosure, is chargeable only with the profits actually earned, or those which would have been earned but for its own wilful default." Citing in support of the foregoing 78 Ga. 597, Ala. Repts. v. 1, 496, Pomeroy's Eq., secs. 1216–'17, Snell's Eq., 308, Coot on Mortgages, 18th L. L. 152, 2 Jones on Mortgages, 1223, 26 Cratton, 61, 78 N. Y., 556, English Notes 2 Thornburg *vs.* Baker, 2 White and Tudor Leading Cases, part 2, 1979 to 1077.

The special master then proceeds to say that "the evidence does not show that the Galeton cotton mills has been guilty of any wilful default in the management of the property or in earning profits, but on the contrary shows that the company has made the most that could be made out of the property in the condition it was in when they received it." In other words, the conclusion of the special master seems to have been that the Galeton cotton mills were only liable to account for such profits as they made while operating the mills in good faith and with reasonable care and prudence. The converse of this proposition is that the company operating the mills would have been liable for such amounts as they ought to have made, if the evidence had shown that in bad faith they had operated the mills so as to produce less than they would have produced by ordinarily careful and prudent management. This seems to state the correct rule on the subject.

The purchasing committee for the bondholders from whom the Galeton cotton mills obtained the property, purchased the same in good faith under a decree regularly entered in this court and at a time when there had only been no appeal from the decree but when an appeal which had been commenced had been abandoned by the then counsel for the defendants in the case. They must have come into possession of the property in good faith believing in their title. It was rather a close question as to whether or not the defendants were entitled to restitution at all after the reversal of the first decree by the appellate court, but restitution was ordered after a careful investigation on certain conditions which were not complied with, and which the appellate court approved. The fact that the appellate court also entertained some doubt as to whether or not it was a case where restitution should be ordered. I think may be fairly gath-

ered from a clause in the last opinion of that court, in which this language occurs: "We are, therefore, relieved from inquiring into and deciding whether the case was one calling for restitution, as the appellants insisted that it was. The court held that it was and the other parties have not appealed."

The question is settled now, however, and is referred to only to show the extent of the good-faith holding of the purchasers when they entered into possession of this property and organized
56 the Galeton cotton mills, and to support the conclusion just stated that they would certainly be held to no stricter rule than to an account for what they actually earned in the operation of the property while acting in good faith with ordinary and reasonable care and diligence.

The determination of this question goes very far towards a determination of all the contentions in the case. The master having found, after a long and tedious examination of all the books, papers and accounts, and after having heard the testimony of all the parties at interest that there was no wilful default or bad faith on the part of the Galeton cotton mills in the management and control of this property, it would require of course a clear case of error to justify the court in interfering with the conclusion reached by him. No such error is apparent. On the contrary, an examination of the record in this case tends to support the conclusion of the master. It seems reasonably clear that the mill was operated in the ordinary and usual way, and also, that instead of the facts and circumstances showing any bad faith or wilful failure to earn profits, they show the reverse.

In reference to the profits arising from the operation of the mill, the two principal matters in regard to which it is claimed by the movants that the special master erred, are as to the purchase of the cotton used in the mill and the prices paid for it, on the one hand; and the sale of goods manufactured at the mill and the prices received for the same on the other hand.

It appears from the evidence in the case that the cotton for this mill and for two other mills was purchased by W. C. and L. Lanier, of West Point, Ga., near where the property in question was located. It is claimed that the cotton furnished the mill by W. C. and L. Lanier was charged to them at a higher price than cotton ruled in the market at the dates that the different lots of cotton were delivered. The argument in favor of this contention is mostly based on a statement of averages as to the ruling price of cotton at different dates while the mill was being operated, compared with the price of the cotton delivered to the mills. The claim for the movants seems to be that L. Lanier of the firm of W. C. and L. Lanier, the firm purchasing the cotton, was the principal owner of the property in question and largely interested in this controversy, and that the cotton was so manipulated as to charge it to this mill at a higher price than was just or proper and for more than it cost or was worth in the market. The special master went into an exhaustive examination of this question; he heard a large amount of evidence and

had at his command all the data that could be desired for
57 reaching a correct conclusion on the subject. He found against the movants in this question. The part of his report referring to the same is as follows:

"It is also insisted by movant that the charges for cotton purchased by the Galeton cotton mills were higher than the ruling market prices at the dates of purchase, and that the movant is entitled to a credit for the difference between the price paid for cotton and the price for which it could have been procured. On this point some of the witnesses testified that the Galeton cotton mill always paid the market prices. The cotton for this mill was purchased by W. C. and L. Lanier who also did the buying for several other mills during the same period of time. Mr. Lanier testified that the cotton was charged to the Galeton cotton mill at the same prices as to the other mills, the same being the actual cost price of the cotton. He admitted that in a few occasional instances cotton was furnished to the mill 'to be priced,' but this was not the custom, and it was done in such comparatively few instances and comparatively small purchases that it does not appear that the mills sustained loss thereby to any appreciable degree. To support the alleged overcharge on cotton, the widest latitude was allowed movant in the introduction of testimony, and a number of witnesses were examined as to the average market prices of various grades of cotton in Atlanta, La Grange, Newman and West Point. In addition to this, the cotton books of several large firms in West Point, who dealt in cotton, were introduced. It does not appear from this mass of testimony that the Galeton cotton mills have paid more for their cotton than it could have been procured for at the time it was bought. The movant undertakes to establish such an inference by a comparison of the prices of cotton for specified months. It would seem that the proper way to show such overcharges, if they existed, would be to show the date and amount of each purchase and the market prices of cotton in West Point on those days. On the whole, the undersigned is of opinion that the claim of overcharge on cotton purchased by the Galeton cotton mills is not made out by the evidence, and therefore, said claim is disallowed."

I have been furnished by the movants with some data and calculations on this subject, of the purchase of cotton, and after carefully examining it in connection with the whole case, I am satisfied that there is no just reason for interfering with the conclusion of the special master on this point.

In reference to the claim that goods were sold for less than the market price, the special master reports, as follows:

"It was further claimed by the movant, that the products of the mill were sold at inadequate prices. This mill was engaged in the manufacture of cotton ducks, known as 7 oz., and 10 oz. duck,
58 respectively. The movant introduced a number of witnesses who testified to the average prices of these classes of goods, and seeks to show, by a comparison of the average prices testified to by these witnesses with the average prices realized by the Galeton cotton mills, that the prices realized were far below what they

should have been. It would seem that in impeaching the account of sales rendered by the respondent, the movant ought to show that the goods at the time they were sold brought less than the market price of the same grade of goods at the time and place of sale, and that failure to realize the best price obtainable was by the wilful default of the respondent. Neither of these propositions is shown by the evidence. While the evidence for the movant, in the shape in which it is presented, may suggest an inference that the goods sold for the account of the Galeton cotton mills ought to have brought better prices, still the evidence strongly indicates that the product of this mill was not equal*ly* in quality to those goods to which the market prices applies. Furthermore, so long as the selling agents acted in good faith, and sold the products of the mill at fair prices, not necessarily the best prices, the movant would have no cause to complain. The undersigned is of the opinion, that the selling agents of this mill realized a good price for its products, and perhaps as good prices as could have been gotten under the circumstances, and, therefore, the finding must be against the claim of the movant that the prices realized for the goods produced by the mill were grossly insufficient."

"Indeed, in regard to the claim of overvaluation of cotton bought and under valuation of goods sold, the undersigned thinks that the movant must stand by the actual results until he can show that those results are materially different from what they should have been; and that they were brought about intentionally or by negligence so gross as to amount to wilful default."

I am unable to find any error in this part of the special master's report. He had the evidence of these sales all before him and seems to have examined quite a number of witnesses as to the actual price of goods of the same kind and qualities, and concluded "that the selling agents of this mill realized good prices for its products and perhaps as good prices as could have been gotten under the circumstances." And this is justified by the facts. Counsel for the movants were informed during the argument, that the court was thoroughly satisfied, on this branch of the case, with the master's report; but it has been argued in the briefs submitted since and through careful consideration has been given the argument thus submitted, I find no reason to change the conclusion
59 reached, on the hearing, that the master's report on this branch of the case was, at least, fully justified by the evidence, if indeed, the evidence did not require it.

In this connection there was considerable discussion on the argument of the case, and there has been since in the briefs of counsel, as to certain books which were offered in evidence by the purchasers of this property. The books were first admitted in evidence and afterwards it turned out from water marks that they were made after the date of certain entries. For this reason the master ruled them out and stated he would only use them, in his examination of the case, so far as they were supported by other evidence, vouchers, &c. It is not shown anywhere, so far as I have seen in the evidence, that these books contain incorrect entries nor that anything entered on

them was fraud-ently entered in order to mislead and deceive. It would seem from what appears in the record, that the master only used these books, so far as they were useful, in finding other data to use in his investigation of these accounts. I am wholly unable to see any harm that was done the movant by such use of these books. If the master verified all of the entries on the books before he made any use of them, that was certainly as much as could be asked and this he seems to have done.

The special master in his report, says: "It was shown to the satisfaction of the undersigned that the books introduced by the respondent, to wit: the journal and ledger, purporting to be the books of original entry of the Galeton cotton mills were not such, but the same appeared to be copied. Yet all the original vouchers from which, no doubt, the original books of entry were made up, were brought into court and tendered along with the said books. These vouchers were submitted to the inspection of the adverse party as well as to the court."

It is also insisted that the master failed to comply with the 79th equity rule, which requires all parties accounting before a master to bring in their respective accounts in the form of debtor and creditors, etc. The master seems not only to have complied with this rule, but to have gone beyond it. He not only had a statement of the account brought in by L. Lanier, whom the movants seem to treat as their real antagonist in the case, but he had all the books, vouchers, cotton tickets, account sales, etc., before him. Counsel for the movants referred to this mass of evidence as "bushels of papers," and perhaps this is not an exaggeration. These papers were shown to the court in baskets at the hearing, and it was stated and not denied that the fullest liberty of examination of the whole matter was given to the master and to counsel on the hearing.

This covers the main contentions for the movants in the
60 case as argued by them on the argument and in the briefs since filed, and disposes of the case so far as it is necessary to discuss the same.

There are three principal grounds of exceptions on the part of the Galeton cotton mills to the report of the master. The first relates to the conversion by the purchasers of this property of certain supplies and findings, which, it is claimed, did not pass by the sale and which belonged to the Huguley Manufacturing Co. There is some difficulty as to this item but I am unable to find satisfactory reasons for interfering with the special master's conclusions. There is doubt as to its correctness as matter of fact, but it is only a doubt. I have concluded, therefore, to let this item stand.

The next ground of exception claimed by the purchasers is as to the waste. I was impressed on the argument with the contention for the purchasers that the master has misconceived the evidence on this subject, but an examination of the record shows that there was evidence to justify this finding. Indeed, if the master had followed one of the witnesses in the case he would have found a somewhat larger amount than he did against the purchasers of this head. The ruling of the master upon this subject will not be disturbed.

The next exception for the purchasers is as to the refusal of the master to allow the Galeton cotton mills the amount paid out by them for insurance on the property. The finding of the master as to this item is as follows:

"It appears that respondent kept the buildings, etc., insured, loss if any, payable to the Galeton cotton mills, for the sum of $75,000.00, at the rate of one per cent per annum. If the buildings had been consumed by fire the proceeds therefor would not have inured in anywise to the benefit of the mortgagors. There seems to have been no contracts wherein the Galeton cotton mills was authorized to take out this insurance and charge the cost of it to the movant. This being true, it is the opinion of the undersigned that respondent had no right to charge to operating expenses the insurance premium, and I therefore find in favor of the movant against respondent on this ground the sum of $3,502.52 as principal, and interest from the 30th day of April, 1896, at the rate of 7 per cent per annum making $353.45."

As to the finding upon this item, I think the special master was clearly in error. The holding of this property by the purchasing committee for the bondholders, and afterwards by the Galeton cotton mills has been analogized all along to the holding of real estate by a mortgage- in possession with the same rights, duties and liabilities, except as has been hereinbefore mentioned, these purchasers, in view of the manner in which they went into possession, the character of their possessions, etc., would be entitled to somewhat more liberal treatment than the usual mortgage- in possession. It is certain that no stricter rule of liability would be applied to them than that to which the law would hold a mortgagee in possession, whose duty it was to account to the mortgagor; and even in this view of the matter, it seems clear that it was the duty of the parties in possession of this property to keep the same insured. It appears from the report of the special master that this insurance was taken out in the name of the Galeton cotton mills, but it would have inured, in case of loss, necessarily to the benefit of all parties at interest.

61

A memorandum attached to the brief of counsel for the purchasers shows that the $3,502.52 was not all on real estate and machinery, but that part of it was on cotton in process of being worked, and manufactured goods, the output of the mill. This statement shows $1,815 on buildings and machinery, and $1,687 on cotton and goods. Unquestionably the purchasers should be allowed credit for this latter sum on the manufactured goods going through the mill, as one of the expenses of the business, and I am about as well satisfied as to their right to the $1,815 on buildings and machinery if this memorandum represents the facts of the case. I am unable, however, to find anything in the evidence which shows any such division of the insurance as this statement claims, and it must therefore be treated, for the purposes of this decision, controlled as the question here is by the record, as insurance on buildings and machinery. Even allowing this to be true, I think the special master should have allowed the purchasers this $3,502.52 as a credit. Treating

the holders of this property as mortgage creditors in possession, which is the effect of the decisions heretofore made in the case, it was reasonable care on their part to keep the property insured for the benefit of all the parties at interest; it was probably their duty to do so. But in any event, in case of fire, the amount received for insurance would necessarily have resulted to the benefit of the mortgagors. Looking at it in another way, it was a proper and legitimate expense connected with the holding and management of the property and one which could be paid out of the earnings of the mill. Why it should not be allowed as a just expense in connection with the possession and management of this property, I am wholly unable to see. No attempt will be made to discuss the numerous authorities cited pro and con. Sufficient it is to say that I am satisfied upon the law and facts, that the amount above named, $3,502.52, principal and $353.45 interest should be deducted from the
62 finding by the master in favor of the movants. Making this deduction there would be left $35,857.54 in favor of the movants. The other exceptions by both parties are hereby overruled, and the report of the special master, except as stated, is confirmed.

This February 23rd, 1898.

WM. H. NEWMAN,
U. S. Judge.

Filed in office Feb'y 23, 1898.

O. C. FULLER, *Clerk.*

Decree on Exceptions to Report of Master.

In the Circuit Court of the U. S. for the Northern District of Georgia.

J. J. ROBINSON, Trustee,
vs.
THE ALA. & GA. MFG. CO. ET AL. } No. 360. In Equity.

In the matter of reference to master and exceptions to his report by the Galeton Cotton Mills and J. J. Robinson, trustee, and exceptions of the Ala. & Ga. Mfg. Co., the Huguley Mfg. Co., and W. T. Huguley.

This cause having come on to be heard upon the report of T. B. Felder, Esq., special master, to whom it was referred by decretal order of this court, dated 16th of March, 1896, and said exceptions having been argued by counsel, it is thereupon ordered, adjudged and decreed as follows:

1. That the first exception filed by said Galeton Cotton Mills and the said Robinson, trustee, be and the same is hereby sustained, and that the sum of thirty-five hundred and two dollars and fifty-two cents, principal, and three hundred and fifty-three dollars and forty-five cents interest, charged against the purchasers in master's report, making a sum total of thirty-eight hundred and fifty-five dollars and ninety-seven cents, being the sum for principal and interest

paid out for insurance, should be deducted from the finding of the master in favor of the movant, which sum being deducted from the amount so found by the master in favor of the movant would leave the sum of thirty-five thousand eight hundred and fifty-seven dollars and fifty-four cents, which is decreed in favor of the movants.

2. All other exceptions by parties to the record are hereby overruled, and the report of the special master confirmed.

3. The costs of all exceptions overruled will be taxed
63 against the party filing the same, and the costs of the exceptions sustained will be taxed against the movants.

4. The decree is rendered without prejudice to the right of J. J. Robinson, trustee, and the Galeton Cotton Mills, or other party at interest, to have the costs, fees and expenses ascertained, adjudged and taxed as against the proceeds of the sale of the mortgaged property and as against the sum ascertained to be due on exceptions to the master's report, and without prejudice to their right to have said sums so found to be due by the master's report after costs, fees and expenses are deducted, applied to the decree of this court in favor of said plaintiff against said defendant, if it shall appear that the plaintiff is so entitled.

Motion for that purpose having been this day filed. This Feb'y 28, 1898.

WM. T. NEWMAN,
U. S. Judge.

Filing: Filed in clerk's office 28 day of Feb'y, 1898.
O. C. FULLER, *Clerk.*

Petition of W. R. Hammond et al. for Allowance of Fees.

U. S. Circuit Court.

J. J. ROBINSON, Trustee,
vs.
ALA. & GA. MFG. COMPANY ET AL., HUGULEY MFG. Company. } In Equity.

W. R. Hammond, John M. Chilton, Allen Fort and Jno. C. Reed, represent to the court, as counsel for the Huguley Mfg. Company, they have prosecuted the application of said Huguley Mfg. Company on the hearing before Thos. B. Felder, special master, appointed by this court to ascertain the amount due to the said Huguley Mfg. Company by the Galeton cotton mills, for the use and occupation of said property, and before this court, which application has resulted in a finding by the special master, and by the court, of the amount of $35,857.53, which amount, or a large part thereof, according to the opinion of this court, already filed, but in which no decree has yet been rendered, is to be applied to the payment of the balance due the bondholders of the Ga. & Ala. Mfg. Co. of the principal and interest on their bonds, as shown by the decree of the court, and

your petitioners pray the court, the Huguley Mfg. Co., joining in the petition, that they be allowed out of said fund their fees, as attorneys, for bringing the same into court, and that the court
64 ascertain the amount due them for their services as counsel in said proceeding, and allow them a lien on said fund for the same, and that only the balance of said fund, after the ascertainment and allowance of said fees, shall be credited or paid over to said mortgage creditors, and that the Galeton cotton mills be required to pay into court for the benefit of your petitioners, whatever amount may be ascertained to be due them as counsel fees for such services, and that your petitioners may have a lien upon said property for said amount of their fees in said cause, in the event of the failure of the said cotton mills to pay the same into court.

Your petitioners pray for such other and further relief as they may be entitled to, in accordance with the principles of equity, for the enforcement of said lien upon said property or said fund, or of their rights in the premises in any other way.

W. R. HAMMOND.
JOHN M. CHILTON.
ALLEN FORT.
JOHN C. REED.

Service: Service acknowledged, copy waived. Ap'l 6, 1898.
P. H. BREWSTER,
B. F. ABBOTT,
Sol's as of Record.

Filing: Filed in clerk's office April 18, 1898.
W. C. CARTER, *Dep. Clerk.*

In the Circuit Court of the United States for the Northern District of Georgia.

J. J. ROBINSON, Trustee, and THE GALETON COTTON MILLS
vs.
ALABAMA & GEORGIA MFG. CO., HUGULEY MFG. CO. } In Equity.

Application to Tax Costs and to Apply Rents and Profits to Mortgage Debt.

In order to make clear what is now for hearing and determination in this case, it is probably best to give a brief statement of what has occurred before during the progress of the case.

On the 21st day of January, 1891, J. J. Robinson, trustee, filed a bill in this court against the Alabama & Georgia Manufacturing Company, the Huguley Manufacturing Company and W. T.
65 Huguley for the purpose of foreclosing a mortgage executed by the Alabama & Georgia Mfg. Co., to Huguley, Yancey and Robinson as trustee. Yancey was dead, Huguley's interest was alleged to be adverse to that of the bondholders, so that Robinson filed the bill alone and made Huguley a party defendant. The

foreclosure was for default in the payment of interest; the defense was that the interest was tendered within the time required, and that under the facts complainant was not entitled to a foreclosure. A decree was rendered foreclosing the mortgage, in the circuit court, which was reversed in the circuit court of appeals, not because of any error in the decision of the circuit court that complainant was entitled to foreclosure, but on the ground that there had been no accounting as to the bonds on which the interest had been paid, and those on which the interest had not been paid.

In the meantime, and pending the appeal, the property had been sold and had been bought in for the bondholders by a committee representing their interests. The case coming back to the circuit court, the Huguley Mfg. Co. demanded restitution which was awarded on certain conditions, which conditions were not complied with. The case was referred to a master, an accounting was had and decree subsequently rendered foreclosing the mortgage for $45,000.00 principal and $17,005.92 interests, with costs. Under this decree the property was sold for $66,000.00. Afterward the property was again sold and bought by the former purchasers, that is, by the mortgage bondholders. There had elapsed between the first and second sales three years and eight months. An application was made to the court by the Huguley Mfg. Co. to require the purchasers to account for the rents and profits during the time of their possession under the first sale and before the second purchase. An order was granted to this effect and a master appointed to hear evidence and take the account. The master, after a lengthy hearing, reported the amount of the rents and profits during the three years and eight months, which report, after slight modification, was approved for $35,857.53.

Judgment had been entered in favor of Robinson, trustee, for any deficiency between the amount of his debt and the amount the property brought at the sale. This deficiency is a few thousand dollars more than the amount of the rents and profits found by the master against the purchasers.

Motion is now made by the purchasers, who, as stated, are the bondholders, to set off the amount found for rents and profits during the time of their possession between the two sales against the amount of the deficiency decree. This is resisted by the
66 Huguley Mfg. Co., it is claiming the rents and profits, and that is the question now presented for determination.

The mortgage under which the property was sold was made by the Alabama & Georgia Mfg. Co., in January, 1884. Subsequently, by reason of some litigation in the State court, the property of the Alabama & Georgia Mfg. Co. went into the hands of a receiver and was sold and bought by persons who afterward organized the Huguley Mfg. Co., they buying at the receiver's sale subject to the mortgage of Robinson, trustee. The contention now is that while the Alabama & Georgia Mfg. Co. does not, and that consequently a debt against the Alabama & Georgia Mfg. Co. cannot, be set off against a debt which is due to the Huguley Mfg. Co., the said last-named company having been deprived of possession by virtue of the first sale

it is claimed that the possession of the purchasers was in its right and that the rents and profits accrued to it. The proposition stated in general terms is this: That one buying mortgaged property does not assume the mortgage debt, that he purchases simply the equity of redemption in the property, and that as he does not undertake to pay the mortgage debt he cannot be required to pay it, nor can anything due him be applied by the court to its payment farther than the property itself. Consequently, it is said in this case that the income of his property for the three years and eight months that the purchasers were in possession between the two sales was, by virtue of the fact that they were ousted from the possession at the time of the first sale, rightfully due the Huguley Mfg. Co., and that as the balance of the mortgage debt was due by the Alabama & Georgia Mfg. Co., that which was due the Huguley Mfg. Co. cannot be applied to the payment of the debt of the Alabama & Georgia Mfg. Co.

The difficulty about this contention is that the amount found by the master as rents and profits, is the rents and profits of the mortgaged property, and during the period when the mortgagee was in possession as purchaser under a sale regularly made under a decree of this court. Their possession was not illegal in the sense that it was wrongfully or usurped, indeed it can hardly be said that their possession was illegal at all. They certainly went lawfully into possession of the property, and after restitution was ordered by the court, it was, on terms which the Huguley Mfg. Co. failed to comply with, and the effect of that order undoubtedly was to recognize the justice of their possession until the Huguley Mfg. Co. did that which the court had required as a prerequisite to restitution. But the effect of all the decisions unquestionably was, and the order of the court was, that their holding was such that they must
67 account for the rents and profits during the three years and eight months referred to. Now should the amount of the rents and profits be paid over to the Huguley Mfg. Co., or be applied to the extinguishment, so far as it will go, of the deficiency decree? It seems to me beyond question that the purchasers are entitled to have this amount applied to the balance due on their debt. In the first place the original petition filed in this case for restitution and for an accounting, etc., asked that the rents and profits of the property should be applied to the payment of the mortgage debt. The language of the petition, after asking that the rents and profits be applied to the repayment of such portion, if any, of $10,000.00 as petitioners might be held liable for, asked that the same be applied "next to the payment of any interest in arrears on said $65,000.00 of said bonds," and that then the remainder be paid to the Huguley Mfg. Co. In addition to this the court, by its order of June 25th, 1896, on the coming in of the report of the commissioner making the second sale, provided, among other things, as follows: "It is ordered, adjudged and decreed that should the said accounting finally result in a judgment in favor of the Huguley Mfg. Co., then such judgment for any amount thereof in excess of any deficiency due by the defendants to the complainant in the foreclosure proceeding shall, for

such excess be and remain a lien upon said property in favor of th
Huguley Mfg. Co., as against the purchasers at said sale or any per
sons holding under them." So that it appears that the Hugule
Mfg. Co., through its counsel, conceded prior to the filing of the re
port by the special master that the rents and profits should be ap
plied to the extinguishment of the remainder of the mortgage debt
It is unnecessary, however, to hold the Huguley Mfg. Co. to the lan
guage of their petition or of the order referred to, for the purpose o
disposing of the case, but the prayer of their petition and the orde
of court which was taken at the time without objection, so far as ap
pears, indicate what the view of counsel on both sides was at the tim
as to how these rents and profits should be applied. But independ
ently of this the rule seems to be thoroughly established by all th
authorities that where a mortgagee goes legally into possession of th
mortgaged property, as these mortgage-s certainly did, that they ar
only accountable for the rents and profits by the application of th
same to their debt. These people were in possession of the property
on which they had their mortgage, and were operating the property
after having gone into possession under a decree regularly entere
and a sale regularly made. They made these profits themselves
Shall it be held that they must pay them over to another s
68 long as their debt for the whole of which they were given
lien on the mortgaged property remains unpaid? It must b
remembered that during the time of their possession between th
two sales, that the whole mortgage debt, with its lien, existed agains
the property. The first sale having been set aside, the mortgage an
the whole debt stood open against the property, and therefore thes
purchasers, it seems to me, stood like any other mortgagee going le
gally into possession of property with the duty to account for th
rents and profits, but with the equal right to apply the same to thei
mortgage debt.

It is not denied, as I understand it, in the argument, that if a bil
had been filed alleging insufficiency of this property to pay the mort
gage debt, that the court would have appointed a receiver and woul
have, through such receiver, impounded the rents and profits i
order to apply the same to the mortgage debt. It is replied, how
ever, that no such allegation was made when the bill was filed an
no receiver asked for. The result has shown conclusively that th
property was insufficient to pay the mortgage debt, and will th
court deprive these mortgagees of the benefit of that which they
themselves have made in the way of rents and profits while in pos
session as indicated, when it would, by positive order, have give
them the benefit of such rents and profits if they had asked them i
advance? In Kountz *vs.* Omaha Hotel Company, 107 U. S., 378, i
is held that "courts of equity always have the power where th
debtor is insolvent and the mortgaged property is an insufficient se
curity for the debt, and there is good cause to believe that it will b
wasted or deteriorated in the hands of the mortgagor, as by cuttin
of timber, suffering dilapidation, etc., to take charge of the property
by means of a receiver, and preserve not only the corpus but th
rents and profits for the satisfaction of the debt." This doctrine i

reiterated in Grant *vs.* Insurance Co., 121 U. S., 105, and in Shepard *vs.* Pepper, 133 U. S., 626.

It is not denied by counsel for the Huguley Mfg. Co., that as against the Alabama & Georgia Mfg. Co. the bondholders in possession would have had the right to have these rents and profits applied to the extinguishment of the mortgage debt. Where by private sale or by judicial sale the equity of redemption passes out of the mortgagor into a third party, does the third party acquire any more rights in this respect than the mortgagor had? In other words, can the rights of the mortgagee which have passed to him by the contract of mortgage be affected in any way afterwards by change in any respect in the holder of the equity of redemption? If so, it would be in the power of the mortgagor to give to a third party rights as against the
69 mortgagee which he himself did not have. It being fundamental that the mortgagee in possession has the right to apply the rents and profits to the extinguishment of the mortgage debt as against the mortgagor, the contention it seems is entirely unsound that a third party should claim such rents and profits when the mortgagor himself could not. If so the invio-bility which is supposed to attach to valid contracts is to that extent destroyed.

The light thrown on this case by the very full and able argument on both sides, of this last question, makes it exceedingly doubtful in my mind as to whether or not the proper direction was given the case at the time application was made by the Huguley Mfg. Co. for restitution. I am not clear but that the right course *which* would have been to have only allowed these purchasers to be disturbed in their possession by the payment to them of the mortgage debt, or at least of that part of it which by the finding of the master had failed to receive interest and which was entitled to foreclosure. It is of course useless to discuss that matter now except as it may help to elucidate the present question.

In the case of Bryan *vs.* Kales, 162 U. S., 411, it is held: "When a mortgagee is in possession of the mortgaged real estate claiming under a foreclosure sale, one claiming under mortgagor cannot by setting up that the foreclosure proceeding was invalid, maintain ejectment to recover the premises without his offering to redeem and tendering payment of the mortgage debt." It is said in reply to this case, by counsel for the Huguley Mfg. Co., that in the case cited it was a collateral attack upon the judgment of foreclosure, but an examination of the opinion shows that the court waived any expression of opinion as to whether it was open to attack collaterally and simply decided that in any event the rule just announced, which is the head-note of the case, was the correct one and was controlling independently of other questions.

If the Huguley Mfg. Co. could not oust the purchasers in this case without paying to them the entire mortgage debt, how can they claim for themselves that which went into the hands of the purchasers as rents and profits of the property so long as it is insufficient to discharge the mortgage debt? It seems too clear for discussion that so long as the mortgagees have not received more than the amount of their debt out of the property, that one claiming

under the mortgagor cannot sustain a claim against them for that which is earned by the property.

A large number of authorities have been cited on both sides in this discussion and the argument has taken rather a wide range, but I deem it unnecessary to go further into the case.

70 The contention for the Huguley Mfg. Co. has been very thoroughly and very ably presented but I do not think it is sound. It seems clear to me that these bondholders as purchasers while in possession were entitled to have the rents and profits derived from the mortgaged property applied to the payment of the bonds and interest thereon and that the Huguley Mfg. Co. is not entitled to the same.

At the time the purchasers took possession of this property there were on hand certain findings, as they are called, certain personal property in the mill which was not covered by the mortgage. This was used by the purchasers and the special master in his report values the findings at $2,500.00. This report was confirmed by the court. It is apparent that the money derived from this source cannot be applied to the mortgage debt. It is earnestly contended, however, that if this property was not embraced in the mortgage the court has nothing to do with that in this case, that the finding of the master was gratuitous and that the parties should be left to their legal remedy outside of this litigation. The court put these purchasers in possession of all this property and the findings were on hand in the mill at the time possession was awarded. Therefore the proper application of this amount, in order to do complete equity and wind up this litigation, should be determined by the court here and now.

As to this $2,500.00 I am of the opinion that it must be accounted for to the Huguley Mfg. Co. by the Galeton cotton mills. As to the amount found by the special master for rents and profits of $35,857.53 it must go so far as it does, to the extinguishment of the mortgage debt and interest. A decree may be taken in accordance with these views.

This April 11th, 1898.

W. T. NEWMAN,
U. S. Judge.

Filed in clerk's office 11th day of April, 1898.

O. C. FULLER, *Clerk.*

Motion of Huguley Mfg. Co. to Ascertain Balance Due on Mortgage Debt, etc.

United States Circuit Court.

J. J. ROBINSON, Trustee,
vs.
ALABAMA & GEORGIA MANUFACTURING COMPANY,
Huguley Mfg. Co.
} In Equity.

71 The defendant, The Huguley Mfg. Company, come now, after the opinion by the court in reference to the application

of the amount found to be due to it by the Galeton cotton mills, and before final decree, and without prejudice to its right to except to any ruling made in the cause in reference to the report of the special master, and without prejudice to its right of appeal from any decree that may be hereafter rendered by the court, denying it the right to recover the amount of the rents and profits due it, from the Galeton cotton mills, and appropriating said amount to the payment of the balance due on said mortgage indebtedness; and moves the court, if the court should render a final decree applying the rents and profits of said Galeton cotton mills to the payment of said balance of said mortgage debt, to apply the amount ascertained to be due to movant for said rents and profits, to the mortgage debt; at the time the rents and profits were earned, and ascertain the balance then due, and only charge movant with the balance of the mortgage indebtedness, thus ascertained, with interest from date of such application.

Movant suggests that the proper way to ascertain the date when this net earning of the mill should be applied, is to take the date half way between the first and last sales of the property, which would be August 1, 1894, and ascertain the amount of principal and interest due on the bonds at that date, and deduct the whole net earnings, as ascertained by the court, from said amount, and only charge movant with the difference from that date, to wit, August 1, 1894, up to the date of the second sale of the property, and allow movant the difference between the amount the property brought at that sale, and the amount of the principal and interest due on said ascertained balance, at the date of the last sale, to wit, May 6, 1896. Movant shows to the court that such difference would be the sum of $3,232.00, besides interest from May 6, 1896, which amount together with the amount of $2,500.00, principal, and $891.04 interest to October 9, 1897, allowed by the master for property converted, with interest on said $2,500.00 from October 9, 1897, movant prays may be allowed it in the final decree, as the amount due to it by the Galeton cotton mills, and that it may have a lien upon said mill and property for said amounts.

Movant attaches hereto a tabulated statement, showing the amount due as claimed herein.

W. R. HAMMOND,
JOHN M. CHILTON,
ALLEN FORT,
JOHN C. REED,
Att'ys for Huguley Mfg. Co.

72 *Statement Showing the Amount Due Huguley Mfg. Co., as per Opinion of Court on Last Hearing.*

Amount of decree, March 30, 1895.

(Last printed Record, p. 280–289.)

Principal, matured bonds	$45,000.00	
Int. to November 1, 1894	17,005.92	
		$62,005.92
Principal, unmatured bonds	$20,000.00	
Int. to November 1, 1894	3,451.24	
		23,451.24
Total amount		$85,457.16
Deduct 3 mos. int. on prin	$65,000.00	
Plus coupons	17,440.00	
	$82,440.00	
Total interest at 8 per cent		1,648.80
Net balance due Aug. 1, 1894		$83,808.36
Deduct earning of mill, as shown by master's report, without interest, and less item of insurance, disallowed by court		28,748.76
Leaves balance due on Aug. 1, 1894		$55,059.60
Interest on same to date of last sale, May 1, 1896, 1 yr., 9 mos.		7,708.40
Total amount due May 1, 1896		$62,768.00
Amount of sale May 1, 1896		66,000.00
Balance		$3,232.00
Int. to April 16, 1898		506.60
Balance surplus (a/c rents and profits)		$3,738.60
Add amount allowed for property converted, prin.	$2,500.00	
Interest to October 9, 1897	891.04	
		3,391.04
Int. on $2,500.00 to April 16, 1898		85.00
		$7,214.64

73 Service: Service acknowledged, copy rec'd, Apr. 16, '98.
P. H. BREWSTER,
B. F. ABBOTT,
Sol's as of Record.

Filing: Filed in clerk's office April 18, 1898.
W. C. CARTER,
Dep. Clerk.

In the Circuit Court of the United States for the Northern District of Georgia.

J. J. ROBINSON, Trustee; THE GALETON COTTON MILLS,
vs.
ALABAMA & GA. MFG. CO., THE HUGULEY MFG. CO. } Equity.

The question before the court on the last hearing in this case, relates to giving practical direction to the finding of the court as to the manner in which the last ruling in the case as to rents and profits shall be carried into effect. The court decided in an opinion filed on the 11th instant, that the deficiency decree, as to the balance due the mortgage debt, could be set off against the rents and profits. It was taken for granted in that decision that the deficiency decree somewhat exceeded the amount found for rents and profits.

Counsel for the Huguley Mfg. Co., now seek to have the rents and profits applied to the deficiency decree, or credited thereon in such way as to change the result and leave a small balance in favor of the Huguley Company. It is claimed that the rents and profits should be credited on the deficiency decree at the time such rents and profits were earned, and that the law will now apply them in that way. So as we have no data by which to apply them at stated intervals during the period of time that elapsed between the two sales, the first day of August, 1894, is taken by counsel as a period midway between the first and the last sale upon the theory that that will establish an average, and the claim is that the credit should be made as of that date.

The result of this contention, if carried into effect, is really to increase the amount found by the special master in favor of the Huguley Mfg. Co. On some of the items found by the special master he allowed interest from a period before the last sale, and on some he did not. So that attention was necessarily called to this fact as it appeared in the report. If fault was found with this
74 report by the Huguley Mfg. Co., it should have excepted to the same at the time the other exceptions were filed. No exception was made on this ground, however, and the report was confirmed at the last term of the court. I think the report of the special master as modified by the court in the opinion filed February 23rd, of this year, fixes the amount which must be applied as against the deficiency decree.

There is no practical difficulty about the matter, because to the extent that these purchasers are compelled to pay the expenses of this litigation, the same should be credited, I think, on the amount of rents and profits, which would wipe out the amount claimed in its favor by counsel for the Huguley Mfg. Co. So that the motion of counsel to make the application *the amount claimed in its favor of counsel for the Huguley* of these rents and profits in the manner set out in their last petition to the court, will be denied.

The matter of apportioning the costs between the parties will be disposed of by a later order.

WM. T. NEWMAN,
U. S. Judge.

This April 26th, 1898.

Filed in clerk's office 27th day of April, 1898.
O. C. FULLER, *Clerk.*

Decree, 4 *June*, 1898.

U. S. Circuit Court for the Northern Dist. of Ga.

J. J. ROBINSON, Trustee,
vs.
ALA. & GEORGIA MFG. CO. ET AL. } No. 360. In Equity.

This cause came on for further hearing on the application of said Robinson, trustee, and Galeton Cotton Mills, to tax fees, costs and expenses, and to apply net proceeds of amount of rents, issues and profits to the mortgage debt; and on the application of W. R. Hammond, J. M. Chilton, J. C. Reed and Allen Fort, for taxations of solicitors' fees, as against the amount of rents and profits found by the master before application of the same to the mortgage debt; and after argument of counsel it was considered, ordered and decreed as follows:

1. The application of said W. R. Hammond, J. M. Chilton, J. C. Reed and Allen Fort for taxation of solicitors' fees against the amount of rents and profits, adjudged to have been earned by the purchaser of the property while in possession is denied.

75 2. That the sum of two hundred and forty-six dollars and 97/100 dollars, being the total expenses incurred by the special commissioner, S. C. Dunlap, who was appointed to make sale of the property, be and the same is hereby taxed as against the purchase prices of said property, to wit: sixty-six thousand dollars, it being the sum at which said property was bid off.

3. It being made to appear that the mortgage indebtedness at the date of said sale was the sum of sixty-five thousand dollars, principal, and thirty thousand, seven hundred and twelve and 01/100 dollars interest. The said net sum of sixty-five thousand, seven hundred and fifty-three and 03/100 dollars, is hereby applied to the said indebtedness as follows:

First. To the payment of said interest, and the balance of said purchase-money, after discharging said interest, said balance being $35,041.02/100 dollars is applied to the principal of said mortgage indebtedness, leaving a balance due on said mortgage debt of $29,958.98/100 dollars. To this last sum is added interest from April 30th, 1896, to Oct. 9th, 1897, at 8 % per annum, which interest amounts to $3,455.22/100 dollars, which principal and interest added together make a total sum due on said mortgage debt of $33,414.21/100 dollars up to said Oct. 9th, 1897.

4. The amount of rents and profits as allowed on exceptions on the master's report, after deducting the amount found for supplies and findings, to wit: $2,500 dollars principal, and $891.04/100 dollars interest, making a total of $3,391.04/100 dollars, principal and interest as found for rents and profits, leaves $28,748.77/100 dollars principal, and $3,717.73/100 dollars interest, which sums added to-

gether make a total of 32,466.50/100 dollars for principal and interest to 9th of Oct., 1897.

This total sum is hereby taxed with the following items of costs and expenses:

The balance costs of this cause, $182.00/100 dollars.

The fees of T. B. Felder, special master, in part, the sum of $2,500.00/100.

The fees of Julius L. Brown, special master, in part, $375.00/100 dollars.

The fees of D. O. Smith, stenographer, in part, $875.00/100 dollars.

The fees of A. L. Waldo, $200.00/100 dollars, which sum- added together, and being deducted from the said $32,466.50/100 dollars, leaves the net amount of $28,334.00/100 dollars which is hereby applied to the mortgage debt, and when so applied leaves a balance of $5,079.70/100 dollars. And for which balance it is decreed
76 in favor of the plaintiff against the Ala. & Ga. Mfg. Co., with interest at 8 % from the 9th of Oct., 1897.

5. The former decree of this court provides that the purchaser of the property may pay the purchase price in the bonds of said defendant, to the extent that such bonds would be entitled to share in the net proceeds of the sale, if the purchase price was paid in cash; and in order to adjust the rights of the bondholders who became the purchasers and to ascertain the extent to which the bonds may be used in paying the purchase price, and to ascertain the extent to which each bondholder may share in the net proceeds of the said property, and of its income, which two sums added together, after all costs and expenses, taxable against said defendant are deducted, amount to $94,087.53/100 dollars, as of date October the ninth, 1897.

As between the bondholders themselves said sum is hereby further decreed to be subject to the further deduction as follows:

(*a*.) The costs, expenses and attorneys' fees paid out under the first sale of the property and which sale was set aside; which costs and expenses are as follows:

To Dorsey, Brewster & Howell, solicitors' fees	$1,000.00
To Abbott & Smith, solicitors' fees	1,000.00
To N. D. Denson, solicitors' fees	600.00
To J. J. Robinson, trustee	500.00
To A. E. Buck, special commissioner	400.00
To costs and advertising and com'r exp	372.00
To court costs	230.50

(*b*.) The solicitors' fees of Dorsey, Brewster & Howell, $4,000.00; solicitors' fees of B. F. Abbott, $4,000.00; the same being for services rendered as solicitors for the trustee, J. J. Robinson, and the bondholders in said cause, and the purchasers of the property, and the Galeton cotton mill, in defense of the cross-action brought by the Alabama & Georgia Manufacturing Company, for accounting for rents, issues and profits, the same appearing to be reasonable and just, the said sums are subject to a reduction of $500.00 paid to said

Dorsey, Brewster & Howell, and $500.00 paid to said B. F. Abbott out of funds in the hands of S. C. Dunlap, special commissioner under order of this court.

And for said balance due them said solicitors are hereby decreed and have a lien on the proceeds of said property and its income in preference to the lien of the mortgage to secure the bonds;
77 the said balance to be and remain a lien on the property itself in the hands of the purchasers at the second sale.

6. It is further decreed that the sum recovered by the Huguley Manufacturing Company, to wit: $2,500.00 principal, and $894.04 interest, the same being for supplies and findings, is hereby taxed with the sum of $750.00, the same being the proper share of the costs taxable against the said Huguley Manufacturing Company as against the special finding in its favor; for the balance of said special finding after deducting the said $750.00, the same to be a lien on the mortgaged property in the hands of the purchasers.

7. It is further decreed that if any of the bondholders should elect not to join in the purchase of the property such bondholder shall be entitled to receive the percentage to which said bonds shall be entitled on distribution, subject of course to any payments that may have been made on the same on the former sale of the property, and subject to all proper taxation for costs and fees, and other proper adjustment according to the scope and effect of this decree. And the purchasers shall pay into court sufficient money to settle with the bondholders who do not join in the purchase if any such shall be necessary.

8. In making distribution any bonds on which a percentage has been paid in cash to former holders, and credited thereon for money paid into court under the first sale of said property, shall be controlled by the person or persons so paying the money into court for the purpose of reimbursement of such money so paid, and the person so paying said money shall be entitled to receive all dividends that such bonds may be entitled to until they are reimbursed the amount so credited on said bonds and interest thereon at 8 % per annum. And the original holders of said bonds are not entitled to receive any percentage on said bonds until after the amount so advanced is repaid to the person so advancing it.

9. The court reserves all questions as to the taxation of costs, fees and expenses, except as hereinbefore decreed and set forth in paragraph 5, *a* and *b*.

All moneys paid out, or which may hereafter be paid out on the part of said trustee, or the bondholders, or the purchasers of the said property, or the Galeton Cotton Mills or other persons for, and on account of said property, or in connection with said first or second sales, and all questions as to the right of such person or persons to be reimbursed who has paid out, or may pay out, any sum for such expense, are reserved for future decree before any distribution is made of the proceeds of the mortgaged property.

This reservation to include the right to pass on the account
78 of L. Lanier, Esq., as agent and trustee for the bondholders in the prosecution and defense of all this litigation.

10. It is also represented that $65,000.00 of bonds of the Galeton cotton mills were issued for the purpose of taking the place of a similar amount of bonds of the Ala. & Ga. Mfg. Co., and that the purchasers of the property, either paid the interest on the bonds or procured it to be paid for several years.

The right of the purchaser or such other person paying said interest to be reimbursed out of the proceeds of said property before any distribution is made is reserved for future decree.

The court reserves the right to make any other and further decree in the premises, adjusting the rights of the bondholders among themselves as may appear to be equitable and just.

In open court June 4th, 1898.

WM. T. NEWMAN,
U. S. Judge.

Filing: Filed in clerk's office June 4, 1898.
O. C. FULLER, *Clerk.*

Petition of L. Lanier for a Deed Absolute.

In the Circuit Court of the United States for the Northern District of Georgia.

J. J. ROBINSON, Trustee, ET AL.
vs.
ALABAMA & GEORGIA MFG. CO. ET AL.

The petition of L. Lanier respectfully shows:

That under a decree of this court in said case the mortgage property set out in original bill in said cause was sold on first Tuesday, the 6th day of May, 1896, and at said sale your petitioner represented such of the bondholders as were living to join in said purchase at said sale, purchased such property at and for the sum of $66,000.00, of which sum the sum of $5,000.00 was paid in cash, the balance to be paid in bonds.

Your petitioner further shows that at the time of said sale there was pending before T. B. Felder, Esq., special master of said court, a reference to an account of the rents and profits of said mortgage property.

Your petitioner further shows that — the confirmation of said sale which was had June 25th, 1896, the order of confirmation provided as follows:

"An order of reference having heretofore been entered in
79 this cause directing T. B. Felder, Esq., to ascertain and report to the court certain claims for rents, profits, wastes and conversion in respect to said property, and said investigation now being in progress before said special master, it is ordered, adjudged and decreed that should the said accounting result in a judgment in favor of the Huguley Manufacturing Company, then such judgment for any amount thereof in excess of any deficiency due by the defendants to complainant in the foreclosure proceedings shall for such excess be and remain a lien upon said property in favor of the

Huguley Manufacturing Company, and remain a lien upon said property in favor of the Huguley Manufacturing Company as against the foreclosure at said sale or any person holding under them, and the court reserves the right to seize and order sale of said property for the purpose of satisfying any such balance so found to be due as hereinbefore set out and title shall be made by said commissioner to the purchaser subject to this provision."

Your petitioner further shows that at the date of said sale and confirmation no report had been made by said master, and it being impossible to determine anything as to a distribution of the proceeds of the said sale until the report of said master was made, no deed was ever made by the commissioner to the property to your petitioner.

Your petitioner further shows that now the master has made his report, to wit: on the 9th day of October, 1897, and said report was finally confirmed by this court after disposing of exceptions filed thereto by both parties, to wit: on February 28th, 1898.

Your petitioner further shows that *by* decree rendered in said cause since said report was affirmed shows that there is a deficiency judgment in favor of the complainant in the foreclosure proceedings, and the Huguley Manufacturing Company failed to get any judgment, except for a small sum for certain property converted, to wit: $2,500.00 and interest thereon *is* shown by master's report, and that the record shows that the net proceeds of said sale and the net proceeds of rents, and profits combined, are not equal to the amount of principal and interest due on the mortgage debt.

Your petitioner further shows that by the decree a large sum of money will have to be paid in to meet the expenses and costs as allowed by the decree, besides to satisfy those bondholders who do not join in said purchase.

Your petitioner further shows that quite a number of the bondholders are unwilling now to join in the purchase of said property but are insisting on taking their per cent. of the proceeds going to the bondholders in cash and are unwilling to furnish the
80 necessary cash to comply with said decree and your petitioner will therefore be compelled to raise the money to pay the expenses, costs and fees, and those bondholders who require the cash in the distribution.

Therefore your petitioner prays the court for an order requiring the commissioner to make to him as trustee or to such person or persons as he may direct, a deed absolute without any reservation as provided in said order of confirmation as to affixing a lien thereon or in favor of Huguley Manufacturing Company and free of any lien on the property in favor of Dorsey, Brewster & Howell, and B. F. Abbott, solicitors in the cause, on your petitioner complying with the decree in said case by paying into the court enough money as may be necessary to pay all the expenses, fees, costs and such bondholders as may decline to turn in their bonds as payment on the purchase, and require payment of what is allotted to each, and he will ever pray, etc.

And that the court will pass such other and further order in

the cause as to the court may seem meet and proper in the premises.

DORSEY, BREWSTER & HOWELL AND
B. F. ABBOTT, *Solicitors for L. Lanier.*

Read and considered. Let this petition be filed. It is ordered that the above-stated application be set for hearing at 10 o'clock on the 23 inst. Let copy be served on the Huguley Mfg. Co., or its counsel. This September 22, 1898.

WM. T. NEWMAN, *Judge.*

Service of a copy of the within petition and order is hereby acknowledged. Sept. 22, 1898.

W. R. HAMMOND,
Att'y for Huguley Mfg. — and as of Record.

Filed in clerk's office 22 Sept., 1898.

O. C. FULLER, *Clerk.*

Answer to Petition of L. Lanier for Deed, &c.

In the Circuit Court of the United States for the Northern District of Georgia.

J. J. ROBINSON, Trustee, etc.,
vs.
THE ALA. & GA. MFG. CO. ET AL. } In Equity.

In the matter of the petition of L. Lanier, filed in the above-
81 entitled cause on the — day of ——, 1898, praying that the decretal order of confirmation of 25th day of June, 1898, be modified, etc.

Comes The Huguley Manufacturing Co., one of the defendants in said petition and for answer to the same, says:

1. It admits that the mortgaged property was offered for sale on the 6th day of May, 1896, and it avers that said L. Lanier bid at said sale the sum of $66,000.00 professing to act in making said bid "as trustee for the holders of the bonds of the Ala. & Ga. Mfg. Co.," and that said property was knocked off to him as such trustee for the sum of $66,000. It denies that said Lanier professed to represent only a part of said bondholders, but aver- upon advice that as he bid generally as trustee for the bondholders his bid was as trustee for all the bondholders.

2. Respondent admits that at the time of the sale a reference was pending for an account of the rents and profits. It further admits that the confirmation of the sale (which it avers was only partial) was had June 25, 1896, and that the court in its decree then rendered, reserved a lien in favor of this defendant as set out in said petition.

3. This defendant admits that at the date of the sale and confirmation no report had been made by the special master and that it was

impossible for them to determine anything as to the distribution of the proceeds of said sale "until the report of said master was made," but it denies that either of said facts furnish any reason for the failure of said purchasers to comply with their bid and they further deny that the failure to make a deed to the purchaser resulted from either of said facts as is impliedly alleged in said petition. The defendant, on the contrary, avers that notwithstanding the pendency of said reference this court, in said order of confirmation, directed the commissioner, who made the same, to execute a deed to the purchasers of the mortgaged property "upon the purchasers complying with the terms of said sale." That this defendant resisted said decree of confirmation on the ground of the pendency of said reference and asked that the sale be postponed until after the coming in of the report of the master, and offered to bid at the sale if the same should be postponed.

But said purchasers insisted upon said decree of confirmation as the same was drawn, and that the same should be tendered without any postponement or delay. Wherefore, this defendant says that said Lanier is not in a position to insist that the pendency of said reference afforded any reason for not complying with said bid, and defendant avers that the true reason why a deed was not made
82 to said purchaser- as the commissioner was required to do by the terms of the decree of confirmation was that said purchasers had not complied with their bid.

4. Defendant admits that the master has made his report on said reference, that said report has been confirmed, and that the amount ascertained thereby to be due the Huguley Mfg. Co. for rents and profits has been applied by this court to the payment *pro tanto* of the alleged deficiency which the court then proceeded at the instance of the solicitors of said bondholders to ascertain. That said deficiency was so ascertained by applying to the mortgage debt the amount of said bid, to wit: $66,000, less $5,000, which had been paid into court in cash, and certain charges said decree assuming as a predicate that said bid had been fully complied with. That in and by said decree which was rendered of date June 4th, 1898, and which is here referred to as a part of this answer, and which will be introduced as evidence on the hearing of this motion, the court at the instance of solicitors for said bondholders dealt with the sum bid as if it had been paid and was subject to the order of the court. Wherefore defendant says that the said Lanier should not now be heard to insist that said bid has been complied with.

5. This defendant further states that the order fixing a lien on said property for the security of the Huguley Mfg. Co., if displaced, would leave this defendant without security for any sum that might be found ultimately due it if on appeal the United States court of appeals should reverse the decree of this court overruling defendant's exceptions to the master's report, and should reverse the ruling of this court applying the sum awarded to Huguley Mfg. Co. by the decree confirming said master's report, to the alleged deficiency in the mortgage debt. That this defendant has prepared its assignments of error for the purpose of taking said case up for review by

appeal and the same would have been tendered before this to the court but for the fact that the solicitors for this respondent reside in different States and have not yet been able to hold a conference with reference to said assignments. That as evidence of the intention to appeal we will, on the hearing of this motion, show the said assignment- to the court with the suggestion they will be filed within the next few days.

6. For further answer this defendant says that the bondholders of Ala. & Ga. Mfg. Co., under the name of the Galeton cotton mills, have been in possession and operating the mortgaged property (a cotton mill) without any right or title and without paying said bid and have received the rents and profits of said property since the date of said sale. That they have never accounted for said
83 rents and profits; and this defendant admits that they are not entitled to the relief prayed in said petition unless they shall offer in connection therewith to respond for such rents and profits.

7. This defendant states that as disclosed by said petition said Lanier does not represent all the bondholders, as trustee, for whom he bid at said sale, and to whom, as trustee, the property was knocked off. That it is sought in and by said petition to substitute new and different purchasers instead of those who bid for said property at the sale. Wherefore, this defendant says that said petition should not be granted.

8. For further cause against the granting of said petition this defendant states to the court that by the original decree of sale under which said property was sold on May 6th, 1896, the terms of sale were fixed as for cash, or to be paid in bonds of the Ala. & Ga. Mfg. Co., with $5,000 in cash. That in and by said petition it is sought to change the terms of said sale into a sale on a credit extending from the date of sale down, to at least the present time, said bondholders in the meantime enjoying the rents and profits of the property; and further to change the terms of the order confirming said sale by displacing the lien of this petitioner so as to enable Lanier to mortgage the property to raise the purchase-money, whereas, by the terms of the sale, bidders were not invited, under such advantageous conditions.

9. For further cause against said petition defendant says that said Lanier is in contempt of this court in this: 1st. That as disclosed by this petition he bid for persons for whom he was not authorized to bid at said sale; 2nd, that as shown by this answer he and some of the bondholders for whom he was possibly authorized to bid have asked for and obtained orders having for their necessary predicate the assumption that said bid had been complied with, without informing the court of such non-compliance; 3rd, that he has waited since May 6th, 1896, to the present time before informing the court of his non-compliance with said sale. Wherefore this defendant says that said Lanier should not be heard to ask for the relief prayed for in said petition.

And having answered this, defendant prays that said petition

may be denied and that defendant be discharged with its reasonable costs.

J. M. CHILTON,
W. R. HAMMOND,
J. C. REED,
Sol'rs — Def't.

Filing: Filed in clerk's office 4 day of Oct., 1898.
O. C. FULLER, *Clerk.*

84 *Decree upon Petition for Deed Absolute.*

U. S. Circuit Court for the Northern District of Georgia.

J. J. ROBINSON, Trustee,
vs.
ALA. & GA. MFG. CO. ET AL. } In Equity. No. 360.

Petition for order directing the commissioner to make deed to the property involved in litigation upon compliance with the terms of the purchase.

This matter came on to be heard and was argued by counsel, and thereupon it was considered, ordered and decreed as follows:

It appearing that the first sale of the property involved in this case was on the 6th day of September, 1892; that L. Lanier, *et al.*, for and on behalf of the bondholders bid in said property at and for the sum of $10,000.00 and paid into court on said purchase the sum of $10,000.00, which sum was distributed under and by order of this court before any notice of an appeal was given, and before any reversal of the decree under which said sale was made.

And it further appearing that at the second sale of said property the said L. Lanier, acting for and on behalf of said bondholders, again bid in the property for the sum of $66,000.00, and paid into the hands of the commissioner the sum of $5,000.00, which sum has also been distributed under and by order of this court.

And it further appearing to be equitable and just that the purchasers should have credit on said purchase for said sum of $10,000.00, with interest thereon from Sept., 1892, the date of the first sale, as well as said $5,000.00 paid at second sale, and that he should be required to pay into court only the balance of said purchase-money, to wit, $66,000 after the sum is reduced by said $10,000 and interest, and $5,000 as above.

The purchasers being now desirous of completing their purchase, and it being the opinion of the court that said purchase should be completed, and that a title free from all liens and encumbrances be made to the purchaser, upon his compliance with the terms of his bid, and that such title should be made as of date May 5th, 1896.

And it further appearing by decree of confirmation rendered June 25th, 1896, that it is provided among other things as follows: "An order of reference having been entered in this cause directing T. B.

Felder, Esq., to ascertain and report to the court certain
85 claims for rents, profits, waste and conversion, in respect to said property, and said investigation being now in progress before the special master, it is ordered adjudged and decreed that should said accounting finally result in a judgment in favor of the Huguley Mfg. Co., then for such judgment, or any amount thereof in excess of any deficiency, due by the defendant to said complainants in the foreclosure proceedings, shall for such excess be, and remain a lien upon such property in favor of said Huguley Mfg. Co., as against the foreclosure at said sale, or any person holding under them, and the court reserves the right to seize and order a sale of such property, for the purpose of satisfying such amount so found to be due as hereinafter set out, and title shall be made by said commissioner to the purchaser, subject to the following provision."

And it appearing that owing to the delay in the determination of the questions submitted to the special master, it has been impracticable to pay for said property in bonds of the Ala. & Ga. Mfg. Co., as provided in the decree of foreclosure, and whereas the said Huguley Mfg. Co. has given notice of an intended appeal of said cause to the circuit court of appeals, which will render it impracticable under such notice to ascertain definitely to what extent the bonds of the Ala. & Ga. Mfg. Co could be used for the purpose of paying the purchase-money as provided in said original decree, and this court being of the opinion that it is for the best interests of all concerned, that said property should be settled for by the purchaser, and a full and complete title be made by the commissioner to said purchaser, or to such person as he may direct, free from all liens, claims or demands in favor of any person or corporation, party to this record.

And it further appearing that the said Huguley Mfg. Co. has failed to obtain any decree in the cause which could be operative as against the property under the provisions of said decree of confirmation, it is therefore ordered that the decree of confirmation be modified with respect to the provisions fixing a lien on the property in favor of the Huguley Mfg. Co., as to any amount it might ultimately be decreed to be entitled to, and that the before-recited provisions of said decree of confirmation be set aside, and whatever rights the said Huguley Mfg. Co. may hereafter be adjudged to have, and any claim that they may have, or may hereafter be adjudged to have, be transferred to the net proceeds of the sale of the property, to be paid into the registry of this court, as hereinafter specified.

And it is ordered and decreed that the purchaser do pay into the court within forty days from this date the whole of the balance of the purchase-money of said property, to wit, $48,433.36/100
86 dollars principal, with interest thereon from the 6th of May, 1896, at 7 per cent. up to date of payment, the same being the balance of the purchase-money, and interest, less $10,000.00 paid into court at the first sale, with interest thereon at 7 per cent., and less $5,000.00 paid in cash at the time of the second sale; and that upon certificate of the clerk of the fact of such payment, thereupon

the commissioner, S. C. Dunlap, Esq., do execute and deliver to said purchaser or such person as he may designate, a deed to the property sold, and the purchaser shall thereupon become vested with a good and clear title to said property, as of date of sale, and with the same effect in all respects as to all persons whatsoever, as if said sale had been completed, and the property conveyed to him upon the date thereof, May 5th, 1896.

And it is further decreed that all claims of the Huguley Mfg. Co., or other parties to this litigation, shall be transferred from said property to the net proceeds of said sale as hereinafter mentioned, and the said net proceeds alone be answerable for all claims, legal or equitable, if any so exist, in favor of said Huguley Mfg. Co., or other persons, parties to this litigation, growing out of use and occupation of said property since the first sale, as well as for the claims in favor of Dorsey, Brewster & Howell and B. F. Abbott, Esq., solicitors for the complainants in said litigation. It being the intention of this decree that this court do release said property from all claims of all parties to this litigation of whatsoever nature, and to transfer such claims, if any exist, to the fund of the court.

The clerk of this court, O. C. Fuller, will pay to the following persons the following amounts respectively, and take their receipts therefor in full settlement of such claim, the same having been by previous decree of this court adjudged to be prior liens on said proceeds in preference to all other claims, to wit:

To Dorsey, Brewster & Howell	$3,500.00
To B. F. Abbott	3,500.00

and the balance of other items of costs and expenses, provided for especially in decree of this court dated 4th June, 1898, to wit, such balance of costs, fees as may be due to persons heretofore decreed to be entitled to payment out of the fund brought into court in preference to the bonds and not taxed against the amount of the recovery in favor of Huguley Manufacturing Co. against Galeton Cotton Mills for supplies and findings.

The balance of said fund so paid into court after said preferred liens and costs and expenses are paid shall be held in the registry of the court subject to further orders and decree to be made.

87 The court reserves the right to make any other and further decree in the premises that may be proper with respect to the disposition of the balance of said fund, after the payment of the items of fees, costs and expenses, as hereinbefore specified.

This October 15th, 1898.

WM. T. NEWMAN,
U. S. Judge.

Filing: Filed in clerk's office 15th day of Oct., 1898.

O. C. FULLER, *Clerk*,
By J. D. STEWARD, *Deputy.*

Motion to Set Aside Decree of 15 *Oct.*, 1898.

U. S. Circuit Court for the Northern District of Georgia.

J. J. ROBINSON, Trustee,
vs.
ALA. & GA. MFG. CO. ET AL. } In Equity. No. 360.

The Huguley Manufacturing Company comes now, and moves the court to open and reconsider the order passed in the above matter on October 15, 1898, and for cause thereof shows as follows:

1. Your petitioner was not represented by counsel on said hearing, and could not be because its counsel on whom it relied, W. R. Hammond, was actually engaged in the trial of a case in the superior court of Fulton county when said matter was heard, and said order was passed, and was not and could not be presented at the hearing of the same.

2. Because said order recites in the body of it, as a conclusion and finding of the court, that the Huguley Mfg. Co. has failed to obtain any decree in the cause which could be operative as against the property, under the provisions of the decree, when the truth is said Huguley Mfg. Co. had obtained and was entitled to an order fixing a lien on said property for the amount of its recovery for supplies and findings.

3. Because said order fails to provide any means or method by which the recovery of the Huguley Mfg. Co. for the amount found in its favor for supplies and findings can be collected, and fails to require the same to be paid into court.

4. Because it orders $7,000.00 to be paid to counsel for the Galeton Cotton Mills, as fees, out of the fund ultimately liable for
88 whatever amount may be awarded to the Huguley Mfg. Co., and recites that said claim for attorneys' fees has priority over the claim of the Huguley Mfg. Co. for rents and profits.

5. Because in many other respects said order shows on its face that it was improvidently granted on the *ex parte* application of counsel for only one side.

W. R. HAMMOND,
Movant's Att'y.

Order.

On considering the foregoing petition, it is ordered that the Galeton Cotton Mills or its counsel show cause before me on the 12th day of November, 1898, why the prayer of the petition should not be granted. Let a copy be served on opposing counsel.

This November 5, 1898.

WM. T. NEWMAN,
U. S. Judge.

Service: Service of a copy of the foregoing petition and order is hereby acknowledged. November 10, 1898.

B. F. ABBOTT,
P. H. BREWSTER,
Counsel for Galeton Cotton Mills.

Filing: Filed in clerk's office Nov. 11, 1898.

O. C. FULLER, *Clerk.*

Answer to Motion to Set Aside Decree of 15 *Oct.*, 1898.

U. S. Circuit Court for the Northern Dist. of Ga.

J. J. ROBINSON, Trustee,
vs.
ALA. & GA. MFG. CO. ET AL. } In Equity. No. 360.

And now come J. J. Robinson, trustee, and the Galeton Cotton Mills, and answers said motion as follows:

1. On the morning of the 15th of October, 1898, Judge W. R. Hammond informed B. F. Abbott, Esq., one of the counsel for respondent, that he, Hammond, was engaged in the superior court and would be for about an hour of the session, that he desired said Abbott to check the matter of passing on the decree in the U. S. circuit court, in above-stated matter, as he, Hammond, had
89 promised Judge Chilton to see the form of the decree before it was signed. Said Abbott told said Hammond, as counsel for the Huguley Co. that he would so check the matter for an hour. P. H. Brewster and said Abbott were in said U. S. circuit court at the opening, and said Abbott stated to the court the conversation that he had had with said Hammond as attorney for the Huguley Mfg. Co. Said Abbott and Brewster remained in court until after 12 o'clock, when said Abbott telephoned said Hammond at the superior court to know when he would be in the U. S. court. Said Hammond replied that he could not tell exactly, and repeated to said Abbott that his promise was to see the form of the decree, and asked said Abbott to send the decree over to the superior court, and he would read it. Said Abbott stated to the court the message he had received, and he took the decree in person to Judge Hammond, and he, Hammond, read it. And the only suggestion that said Hammond made was that the time allowed the purchaser for paying in the money on his purchase was too long, and requested said Abbott to state to the court that view which said Abbott did.

The court signed the decree just as it was prepared with the exception that the decree provides for the money to be paid into the registry of the court instead of into the hand- of S. C. Dunlap, Esq., the special commissioner, as in the original draft.

Said Hammond asked no further postponement on account of his engagements, and said Abbott understood said Hammond to acquiesce in the decree as being the judgment which the court would render as the result of the hearing of said matter theretofore had in open court.

2. Respondents deny that the Huguley Co. has ever obtained any decree which could be operative against said property sold by the commissioner for the reason that the mortgage debt, principal and interest, was and is largely in excess of the net proceeds of said sale and the amount of rents and profits, and the amount of damages for property converted in the aggregate.

3. Respondents deny that the decree fails to provide any means by which the special finding in favor of the Huguley Mfg. Co. for supplies and findings converted shall be paid, but on the contrary the decree provides that all claims of every kind and description in favor of said Huguley Mfg. Co. shall be transferred to said fund in court.

4. This court decreed that on June 4th, 1898, that the attorneys' fees of Dorsey, Brewster & Howell, and B. F. Abbott, Esq., were and are a prior lien on the proceeds of the property of the Ala. & Ga. Mfg. Co., and said decree of Oct. 15th, 1898, reaffirms said
90 former decree, and directs that said counsel fees be paid, which is according to the practice and the law in such cases.

And having fully answered, respondents pray said motion be denied, and that the costs of the same be taxed against the Huguley Mfg. Co.

DORSEY, BREWSTER & HOWELL AND
B. F. ABBOTT, *Solicitors for Respondents.*

UNITED STATES OF AMERICA, }
Nor. Dist. Ga. }

Appeared B. F. Abbott before me, the attesting officer, and makes oath that the statements of fact contained in the first paragraph of the foregoing answer are true.

B. F. ABBOTT.

Sworn to and subscribed before me Nov. 12, 1898.

GEO. S. BARNARD,
Deputy Clerk U. S. Cir. Court.

Filing: Filed in clerk's office Nov. 12, 1898.

O. C. FULLER, *Clerk.*

Order Modifying Decree of 15 *Oct.*, 1898.

In the Circuit Court of the United States for the Northern District of Georgia.

J. J. ROBINSON, Trustee, }
vs.
ALABAMA & GEORGIA MFG. COMPANY. }

Motion of Huguley Manufacturing — to modify order of October 15, 1898.

Upon consideration of the foregoing petition and answer thereto, it is ordered that the decree of October 15, 1898, be and the same is hereby amended and modified as follows:

By adding after these words: "and it further appearing that the said Huguley Manufacturing Company has failed to obtain any decree in the cause which could be operative as against the property under the provisions of said decree," these words: "except as to the amount found in favor of the Huguley Manufacturing Company for supplies and findings which are herein-
91 after provided for." And amending said decree further by inserting in said order after the words: "B. F. Abbott $3,500," and the words "and the balance of other items," these words: "and to the Huguley Manufacturing Company the sum, which by the decree of June 4th, 1898, was decreed in favor of said company for supplies and findings and interest therein provided, less the sum charged in said decree upon said fund as costs and expenses."

Done in open court, this November 12th, 1898.

WM. T. NEWMAN,
U. S. Judge.

Filing: Filed in clerk's office 12th day of Nov., 1898.

O. C. FULLER, *Clerk.*

Petition for Appeal.

In the Circuit Court of the United States for the Northern District of Georgia.

THE HUGULEY MANUFACTURING COMPANY, and William T. Huguley, and The Alabama & Georgia Manufacturing Company, Appellants,
vs.
THE GALETON COTTON MILLS and J. J. ROBINSON, Trustee, etc.
} In Equity.

Intervention by the Huguley Mfg. Co. for accounting for rents and profits. Reference to master, etc.

Appeal to United States circuit court of appeals for the fifth circuit, at New Orleans, La.

The Huguley Manufacturing Company and The Alabama & Georgia Manufacturing Company, defendants in the original bill in the above-entitled cause, and interveners in the petition filed in the said cause, praying for an accounting for rents, issues and profits, etc., conceiving themselves aggrieved by the orders and decrees entered in the said cause, on to wit, the 28th day of February, 1898, 4th day of June, 1898, and on the 15th day of October, 1898, do hereby appeal from the said orders and decrees, to the United States circuit court of appeals for the fifth circuit, at New Orleans, La., and they pray that this, their appeal, may be allowed, and that a transcript of the record and proceedings and papers, upon which the said order and decree were made, duly authenticated, may
92 be sent to the United States circuit court of appeals, for the fifth circuit, at New Orleans, La.

And the said appellants also pray, that certain original books and papers, which are more particularly identified and described in the affidavits of Wm. R. Hammond, and John M. Chilton, and Wm. T. Huguley, herewith filed, be also transmitted to the said court of appeals, for the fifth circuit, at New Orleans, La., for the inspection of the said court, for the reasons assigned in the said affidavits.

JOHN M. CHILTON,
W. R. HAMMOND,
Sol's for The Huguley Mfg. Co. et al., Appellants.

Order Allowing Appeal.

It is ordered that the foregoing petition for appeal be allowed, counsel for appellees objecting to its being allowed as to the decree of Feb'y 28, 1898, on the ground that it was rendered more than six months before this petition for appeal, and to the decree of Oct. 15, 1898, on the ground that appellants have accepted the fruit of the decree.

Dec. 2, 1898.

WM. T. NEWMAN,
U. S. Judge.

Service: Due and legal service of a copy of the foregoing petition and order is hereby acknowledged.

Dec. 2, 1898.

B. F. ABBOTT,
P. H. BREWSTER,
Solicitors for Appellees.

Filing: Filed in clerk's office Dec. 3, 1898.

O. C. FULLER, *Clerk.*

Assignment of Errors.

In the Circuit Court of the United States for the Northern District of Georgia.

THE HUGULEY MANUFACTURING COMPANY, and William T. Huguley, and The Alabama & Georgia Manufacturing Company, Appellants, *vs.* THE GALETON COTTON MILLS and J. J. ROBINSON, Trustee, etc.	In Equity.

Intervention by the Huguley Mfg. Co. for accounting for rents and profits. Reference to master, etc.

93 Appeal to United States circuit court of appeals for the fifth circuit, at New Orleans, La.

The Huguley Manufacturing Company and William T. Huguley, and the Alabama & Georgia Manufacturing Company, having prayed and taken an appeal in the above-entitled cause, now jointly and severally assign the following errors:

I. The court erred in the decree of the 25th day of June, 1896, in overruling the objections incorporated in the answer filed by the Huguley Manufacturing Company to the rule to show cause why the sale of the 6th day of May, 1896, should not be confirmed, and in confirming the said sale in advance of an ascertainment of the results of the reference then pending before the special master, T. B. Felder, Jr.

II. The court erred in the decree of the 25th day of June, 1896, in confirming the said sale in advance of a compliance of the purchasers with the terms of the said sale of the 6th day of May, 1896, said decree affirmatively showing that the terms of sale had not been complied with.

III. The court erred in confirming the report of the special master, in this:

That the said report discloses on its face, that said master did not himself examine into the proper receipts and disbursements incident to the custody and operation of the mortgaged property, as required by the decretal order of reference; and, that no such examination was made by any other person, at the instance of or under the direction of the special master.

IV. The court erred in confirming the said report of the special master, in this:

That said master failed to compel the accounting respondents to file their accounts as provided by the 79th rule of Equity Practice.

V. The court erred in confirming the report of the special master, in this:

That the master, in making the said report, ignored the 76th rule of Equity Practice.

VI. The court erred in overruling exception No. 1, filed to the report of the special master, in this:

That said report discloses on its face, that the special master adopted as the rule of liability on the part of the respondent, the accounting party, (designated in said exception No. 1, and hereinafter referred to, for convenience, as "The Galeton Cotton Mills"), during the time of its occupancy and possession of the property in dispute, that it was chargeable only with the profits "actually earned," or which would have been earned but for its "wilful default."

94 Whereas, the true rule of liability, as appellants insisted then, and now insist, was, that the appellee, The Galeton Cotton Mills, was liable to account to the Huguley Manufacturing Company, for such profits as would have been earned by the exercise of "ordinary and reasonable diligence," on its part.

VII. The court erred in overruling exception No. 4 to the report of the special master.

The master was in error, in holding and finding that the amount of "interest," charged by the officers and agents of the Galeton cotton mills against the corporation, under the general charge of "balance interest on account," being $17,196.24, should be reduced to only $14,021.27, and allowing the last-named sum to stand as a charge against the Galeton cotton mills in favor of their agent and

treasurer, Horace S. Sears, and thus operate as a charge against appellant in the accounting between it and the Galeton cotton mills. Appellant claiming and contending that no evidence was furnished to the master on which he could allow the same, and that the only interest charge which could properly be allowed was "interest on working capital," which, the evidence showed, would not exceed $30,000.00 principal, and that the interest on this sum, at 7 per cent. would be only $7,700.00 for the period of accounting.

Appellant contends that an additional amount should have been allowed in its favor against the Galeton cotton mills, on this account, of $6,321.47.

VIII. The court erred in overruling exception No. 5, to the report of the special master:

The master was in error in holding and finding that the charges for interest on "datings," contained in the account sales, rendered by N. Boynton & Co., to the Galeton cotton mills, to wit, to the amount of $14,108.35, was the proper charge in favor of the Galeton cotton mills against appellant. Appellant contends, that this amount so charged should not have been allowed, nor any part of it, and that the whole amount of it should have been added to the amount found in favor of appellant, The Huguley Manufacturing Company, against The Galeton Cotton Mills.

IX. The court erred in overruling exception No. 6, to the report of the special master:

The master was in error, in holding and finding that there was no excess of "commission" charged by N. Boynton & Co., the sales agents of the Galeton cotton mills, on account of sales of duck and other products of the mills, said charge having been five per cent. (5%) on the gross sales, or $30,626.19, in the aggregate.

Whereas, appellant contends, that no more than 3½ per
95 cent. should have been allowed as a credit to the Galeton cotton mills on account of said sales, or the gross sum of $21,438.33, which would make an additional amount of $9,187.88, that should have been found by the special master in favor of appellant against the Galeton cotton mills.

X. The court erred in overruling exception No. 7 to the report of the special master:

The master was in error, in holding and finding that no amount should be allowed to appellant against the Galeton cotton mills, on account of "shortage in cotton," or the difference in the amount of cotton bought and paid for by the Galeton cotton mills, and the amount actually opened and consumed by the mills, as shown by their own books, said amounts being as follows:

Actual lbs. of cotton bought and paid for.....	5,408,341 lbs.
Actual lbs. of cotton opened and consumed.....	5,283,028 lbs.
Difference or balance unaccounted for.....	125,313 lbs.

Appellant contends that there was no evidence showing that this cotton was accounted for, and that the special master should have

found in its favor, against the said Galeton cotton mills, the value of the same, at 8¼ cts. per lb., or $10,338.32 in the aggregate.

XI. The court erred in overruling exception No. 8 to the report of the special master:

The master was in error, in finding and holding that the valuation of $33,737.28, credited by the Galeton cotton mills for the goods on hand at the end of the period of accounting, was correct valuation, and that no additional charge should be made against the Galeton cotton mills, in favor of appellant, on this account.

Appellant claims and contends, that the evidence shows clearly that the market value of the goods on hand, at the end of the period of accounting, was as follows:

On hand, April 30th, 1896, cotton duck, 273,050 lbs.	
Of which, in Boston (fr't prep'd) 117,832 lbs. 12½	$14,729.00
Of which, in West Point, Ga., 155,219 lbs. 12½	19,402.25
Fr't prepaid to Boston, on former lot	707.00
Additional value of converted goods	850.00
Goods at mill, unbaled, 1,691 lbs. 12½	211.37
Cotton at mill, in process, 10,000 lbs. 12½	1,250.00
Other stock (cotton) waste, etc. 24,207 lbs. 2 cts	484.14
Total net value, as per testimony	$37,633.76
Deduct valuation, as per Lanier's estimate	33,737.28
Leaving a net balance or deficit, on this account of..	$3,896.48

96 which should have been charged in favor of appellant against the Galeton cotton mills, in addition to the amount allowed of, to wit, $33,737.28.

XII. The court erred in overruling exception No. 10 to the report of the special master:

The master was in error, in holding and finding that no amount should be allowed in favor of appellant, The Huguley Manufacturing Company, against the Galeton cotton mills, on account of "overcharge on cotton," bought and charged against the Galeton cotton mills by W. C. & L. Lanier. Appellant claiming and contending, that the special master should have allowed, on this account, the sum of $50,359.52.

W. T. NEWMAN,
U. S. Judge.

XIII. The court erred in overruling exception No. 10 (*a*), to the report of the special master:

The master was in error in holding and finding that appellant should have shown the amount and date of each purchase made by the Galeton cotton mills, and the market prices of cotton on those days, when it was a matter entirely and exclusively within the knowledge of the Galeton cotton mills and of its officers and agents to show the amount and date of each of these purchases; and when appellant had shown the dates when they were charged, and had shown, by abundant evidence, the market prices on those days.

XIV. The court erred in overruling exception No. 11 to the report of the special master:

The master was in error, in holding and finding that there was no liability on the part of the Galeton cotton mills to The Huguley Manufacturing Company, appellant, on account of its failure to sell the duck manufactured by the mill at the full "market price" of the same. The evidence showing, as appellants then contended and now contend, that the cotton duck was sold at an amount less than its market value, in a large sum, to wit: $96,641.23.

XV. The court erred in overruling the 14th ground of exception to the report of the special master:

Appellants then contended and now contend, that the special master erred in admitting and using, as original evidence, the "account of sales" made by N. Boynton & Co., to the Galeton cotton mills, and in using the same as being a correct report of sales, made by N. Boynton & Co., of the product of the mill, the testimony not having been sufficient, as appellant contended and now contends,
97 to show that these accounts of sales were correct, or that they showed correctly the receipts and disbursements made by N. Boynton & Co. on account of the sale of the product of the mills during the period of accounting.

Counsel for appellant, The Huguley Manufacturing Company, did not object to these accounts of sales going in evidence as showing in connection with the testimony of L. Lanier, the amounts of money actually paid by N. Boynton & Co. to the Galeton cotton mills, but did object to their being used by the master, as correctly showing the amounts actually received for the mill products by N. Boynton & Co., there having been no sufficient nor independent evidence, as counsel for appellant contend- and now contends, that they correctly represented the actual and proper receipts and disbursements on that account.

16. The court erred in overruling exception No. 12 to the report of the special master, in this:

The master was in error in respect to his use of the "journal" and "ledger," under the circumstances stated in said 12th exception, said circumstances being as follows: Counsel for appellant, when they were first offered, objected to the admission in evidence of the books of the Galeton cotton mills, to wit: the journal and ledger, on the grounds, that they had not been shown to be the original books, or books of original entry of the mills; and appellant offered evidence that they were too fresh to have been original books, and had no check-marks upon them as such books of original entry, in daily use, commonly have. The books were at first ruled in by the master. Afterwards counsel for appellant, The Huguley Manufacturing Company, offered further evidence, and showed that the "watermarks" on the paper, of which the books were made, bore the date of "1894" imprinted on the face of same; whereas, the entries on the books purported to have commenced in "1892" and appellant renewed its motion to exclude the books on the introduction of this new evidence. But, nevertheless, the master, in making up his report, has used and relied upon these books, and has had them

audited (in parts) by A. L. Waldo, the expert accountant employed by him, and has based his report upon the contents of these books.

Appellant contended and now still contends, that these books should not have been used or considered by the master, at all in making up his report, but that the report should have been made up from the other evidence that was before the master, excluding from consideration, entirely, these books.

XVII. The court erred in overruling the 13th ground of exception to the report of the special master.

Appellant then contended and now contends, that the special master erred in admitting over the objection of counsel for the appellant, The Huguley Manufacturing Company, the testimony
98 of L. Lanier, that the Galeton cotton mills, during the period of its operation, from the 6th day of September, 1892, to the 6th day of May, 1896, made a "net loss" of $4,654.60; the objection to said testimony being that it was the result of a calculation made by a person or persons other than the witness, or any witness, from the books of the mills, and that the books were the best evidence of their contents, and of any loss or profit made or sustained by the mills.

Said evidence was as follows:

Q. "I will get you to state to the court the exact financial result of the operation of this mill for three years and a half; the period it was operated by the Galeton cotton mills, from the first sale to the last."

A. "The stock we had on hand the 30th day of April, 1896, was sustained at 11½ cents per pound, and that leaves a loss in the operations of the mill, for that time, of $4,654.60. We estimated the goods on hand, and got that result."

(By the MASTER:)

Q. "For what period of time?"
A. "From September 19th, 1892, to April 30th, 1896."
Q. "That covers the entire period?"
A. "Yes, sir."
Q. "That was a loss?"
A. "Yes, sir. $4,654.60."
(Record, p. 1362.)

Q. "This result is arrived at by you taking from the results of figures made by others?"
A. "Yes, sir."
(Record, p. 1441.)

The books having been excluded by the master, as evidence, this testimony, showing the result of a calculation or estimate "profit or loss," as based on receipts and expenditures, as shown by these books, should have been excluded from evidence, and should not have been used by the master in making up his report, as correctly representing the result of the operation of said mill during the period of accounting.

Counsel for appellant claimed then and claim now, that this was a fundamental error that vitiates the entire finding of the master, and that he should have been directed by the court to reconsider the evidence and submit a new report in the case, excluding from consideration, entirely, the books which were excluded by him.

XVIII. The court erred in the decree appealed from, dated the 4th day of June, 1898, in applying to the payment of the alleged deficiency on the mortgage debt, so much of the amount which, on confirmation of the report of the special master, had been ascertained to be due as "rents and profits" in favor of the Huguley
99 Manufacturing Company. Such application deprived the Huguley Manufacturing Company of its property, without due process of law, and was thus violative of the fifth amendment of the Constitution of the United States.

XIX. The court erred in said decree of the 4th day of June, 1898, in this:

The amount of the rents, issues and profits, ascertained to be due and owing to the said Huguley Mauufacturing Company, by the decree of the 23rd day of February, 1898, confirming the master's report, and in which the sum of $36,210.99 was ascertained to be so due in favor of appellant, was the property of the Huguley Manufacturing Company, and no part thereof could lawfully be applied to the mortgage indebtedness due by the Alabama & Georgia Manufacturing Company.

XX. The court erred in said decree of the 4th day of June, 1898, in granting the petition of the Galeton cotton mills to apply the amount found in favor of the Huguley Manufacturing Company to the balance due by the Alabama & Georgia Manufacturing Company on the foreclosure decree, or the deficiency thereof; because, the Huguley Manufacturing Company was not liable for, and never assumed to pay, any part of the indebtedness secured by the mortgage foreclosed in this cause. And the court erred in applying its property to the payment of any part of the said debt.

XXI. The court erred in granting said petition of the Galeton cotton mills, because the indebtedness by the Galeton cotton mills to the Huguley Manufacturing Company, for rents and profits, and the debt of the Alabama & Georgia Manufacturing Company to the bondholders, were owing in different rights, and could not, therefore, be set off the one against the other.

XXII. The court erred in applying to said alleged deficiency decree the said debt due by the Galeton cotton mills in favor of the Huguley Manufacturing Company for rents and profits, in this:

That no deficiency decree, and no judgment or decree for said alleged deficiency, had ever been rendered.

XXIII. The court erred in said decree of the 4th day of June, 1898, in applying the said debt for rents and profits due and owing to the Huguley Manufacturing Company by the said Galeton cotton mills, to said alleged deficieney, in this:

That no proceeding had ever been instituted in this cause for the purpose of ascertaining what deficieney, if any, existed, after crediting the amount for which the property was sold.

XXIV. The court erred in the decree of the 4th day of
100 June, 1898, in applying the said rents and profits, as aforesaid, in this:

That there had not been, prior to the said decree of the 4th day of June, 1898, any confirmation of sale of the said property, the only decree, in that respect, namely, the decree of the 25th day of June, 1898, disclosing on its face, that the purchasers had not then complied with the terms of said sale. And there was, subsequently, down to the rendition of said decree of the 4th day of June, 1898, no evidence of any such compliance.

The petition of L. Lanier, filed on the — day of October, 1898, disclosed that the terms of the said sale (of the 6th day of May, 1896) had not been complied with, when the decree of the 4th day of June, 1898, was made and entered.

XXV. The court erred in the decree of the 4th day of June, 1898, in applying said rents and profits, ascertained to be due and owing in favor of the Huguley Manufacturing Company, to said alleged deficiency, in this:

That neither of the appellants had its day in court in any proceeding instituted for the purpose of judicially ascertaining the existence and amount of any such alleged deficiency. And the ascertainment in said decree of the 4th day of June, 1898, of said alleged deficiency was without due process of law and violative of the fifth amendment of the Constitution of the United States.

XXVI. The court erred in the decree of the 4th day of June, 1898, in applying the said rents and profits, due and owing to the Huguley Manufacturing Company, to the said mortgage debt, in this:

That neither in the bill, nor in any other proceeding, had the bondholders or their trustee or trustees ever intercepted or ever attempted to intercept the said rents and profits, or to condemn them to their mortgage debt.

XXVII. The court erred in the decree of the 4th day of June, 1898, in applying the said rents and profits to the said alleged deficiency, in this:

That, by the sale of the mortgaged property, the lien of the mortgage, as security, was exhausted, and any balance was for a mere money demand, enforceable only by execution, when properly reduced to a decree for a deficiency.

As mortgagees, neither said bondholders nor their trustee had any lien nor any right to any rents and profits theretofore earned, or for which any person might be liable to account to the mortgagor or its assignee.

XXVIII. The court erred in the decree of the 4th day of June, 1898, in applying the said rents and profits, ascertained in favor of the Huguley Manufacturing Company, to the said mortgage
101 debt of the Alabama & Georgia Manufacturing Company, in this:

The bill and subsequent proceedings in this cause show that the debt secured by the mortgage foreclosed and the mortgage itself constitute contracts governed by the laws of Georgia; that long prior

to and down to the date of the execution of the said mortgage and the creation of the debt secured thereby, it had been and was the law, and had become, first, by the decisions of the supreme court of the State of Georgia, and next, by statutory enactment of the legislature of the State of Georgia, a "rule of property" that a mortgage constituted only a lien upon the mortgaged property, passing no title; and that the mortgagee, in no event could become entitled to the rents and profits of the mortgaged property.

And the said law was, at the time of the said decree of the 4th day of June, 1898, and still is the law of the State of Georgia.

XXIX. The court erred in the decree of the 4th day of June, 1898, in making the said application of the rents and profits, due and owing to the Huguley Manufacturing Company, to the said mortgage debt, in this:

That to apply the said rents and profits to the payment of any part of the mortgage debt, would be to impair the obligation of the contract between the Alabama & Georgia Manufacturing Company, and Robinson, Yancey and Huguley, trustees, and others, evidenced by the said mortgage and the bonds and coupons secured thereby, for this:

That the bill and subsequent proceedings in this cause show that the debt secured by the mortgage foreclosed and the mortgage itself constitute contracts governed by the laws of Georgia; that long prior to and down to the date of the execution of the said mortgage and the creation of the debt secured thereby, it had been and was the law of the State of Georgia; and had become, first, by the decisions of the supreme court of the State of Georgia, and next, by statutory enactment of the legislature of the State of Georgia, a "rule of property," that a mortgage constituted only a lien upon the mortgaged property, passing no title, and that a mortgagee, in no event, was or could become entitled to the rents and profits of the mortgaged property.

And the said law was, at the date of the said decree of the 4th day of June, 1898, and still is, the law of the State of Georgia.

XXX. The court erred in the decree of the 4th day of June, 1898, in overruling the objections interposed by the Huguley Manufacturing Company to the granting of the motion wherein and whereby it was sought to apply the said rents and profits, which had
102 been ascertained to be due in favor of the Huguley Manufacturing Company, to the said alleged deficiency due on the mortgage debt.

XXXI. The court erred in the said decree of the 4th day of June, 1898, in that:

It included, as a part of the said deficiency, that portion of the mortgage debt, in respect to which no default had been made at the time of the filing of the bill, and with respect to which, the court expressly declined to grant a foreclosure, as set forth in the 2nd and 7th paragraphs of the decree filed April 1st, 1895. (See 2nd printed Rec., pp. 280–'9.)

XXXII. The court erred in its decree of the 4th day of June, 1898, in fixing the amount of said alleged deficiency, in this:

That the said decree of foreclosure, filed on the 1st day of April, 1895, under the 2nd paragraph, provided as follows, to wit:

Par. 2. "The court finds, that after said default had occurred, as found above, but before the filing of this suit, the holders of forty (40) bonds in number, accepted the interest on the said bonds, and by the acceptance of said interest, they waived the default, and the principal of said bonds, amounting to the aggregate sum of $20,000.00, was not due and payable at the date of filing this suit, and that said trust deed cannot be foreclosed for said amount of said 40 bonds."

Again, it was also provided, in the 7th paragraph of the said decree, as follows:

Par. 7. "It is further ordered and decreed, that the remainder of said bonds, to wit: 40 in number, which are numbers as set out in par. 2 of this decree, for the aggregate sum of $20,000.00, and for the sum of $3,451.24, interest thereon to Nov. 1st, 1894, were not due at the time of filing this suit, and said plaintiff, as trustee, is not entitled to recover therefor."

By the 9th paragraph of the said decree, the said mortgage was foreclosed and a sale ordered, for the sum of $45,000.00, principal, (that being all of the mortgage debt then due), and for $17,005.92, interest thereon, "with all accruing interest, at 8 per cent. as in this decree adjudged to be due."

It appears, that on the 6th day of May, 1896, said mortgaged property was sold under this said decree, and brought the sum of $66,000.00. Applying the said sum of $45,000.00, principal, and $17,005.92, interest, with interest on these said two sums at 8 per cent. per annum, left remaining due upon said debt, for which said mortgage was foreclosed, a sum very much less than the alleged deficiency, ascertained to be due by the decree of the 4th day of June, 1898, the said balance or difference being, to wit: $3,446.60.

103 XXXIII. The court erred in the decree of the 4th day of June, 1898, in deducting from the amount awarded for rents and profits, etc., in favor of the Huguley Manufacturing Company, the following items, to wit:

(*a.*) "The balance costs of this cause".....	$182.00
(*b.*) "The fees of Julius L. Brown, special master.....	375.00
(*c.*) "The fees of D. O. Smith, stenographer (in part).....	675.00
(*d.*) "The fees of T. B. Felder, special master (in full)....	2,500.00
(*e.*) "The fees of A. L. Waldo, accountant (in full).....	200.00
Total.....	$3,932.00
(*f.*) And in deducting from item of "supplies and findings" as "proper share of costs taxable against said Huguley Mfg. Co." (special).....	750.00
P. 19. Total taxed against the Huguley Mfg. Co.....	$4,682.00

And in allowing, (under the head of "As between the bondholders

themselves") "solicitors' fees," as shown under subdivisions (*a*) and (*b*) of par. 5, of said decree of the 4th day of June, 1898, as follows:

(*a*.)	Dorsey, Brewster & Howell		$1,000.00
	Abbot & Smith		1,000.00
	N. D. Denson		600.00
	Total		$2,600.00
(*b*.)	Dorsey, Brewster & Howell	$4,000.00	
	B. F. Abbott	4,000.00	
		$8,000.00	
	The foregoing fees to Dorsey, Brewster and Howell, and B. F. Abbot, being credited in said decree by $500.00, previously paid each, to wit:	1,000.00	7,000.00
	Total "solicitors' fees" under above head		$9,600.00

And in allowing, under same head, *i. e.*: "As between the bondholders themselves," par. 5 (*a*), the respective items of "expense," etc., as follows, to wit:

104	(*a*.) A. E. Buck, special commissioner.	$400.00	
	(*b*.) Advertising	250.00	
(*c*.)	Court costs, clerk's fees, taking depositions, etc	350.00	$1,000.50
	Total expenses of reference, solicitors' fees, court costs, etc., as above set out		$16,282.50

And appellant assigns as error each of the said items as detailed above, under this assignment (No. XXXIII), as if each had been made the subject of a separate assignment.

XXXIV. The court erred in overruling the petition of Hammond, Chilton, Fort and Reed, solicitors, and in which the Huguley Manufacturing Company also joined, praying to be allowed compensation or fees for bringing into court the fund adjudged in favor of the Huguley Manufacturing Company.

XXXV. The court erred in overruling the motion of the Huguley Manufacturing Company, filed the 18th day of April, 1898, in and by which it was sought to correct the decree by allowing the Huguley Manufacturing Company interest upon the sundry items awarded to it, as of a "mean date" between the date of the first sale, to wit: the 6th day of September, 1892, and the date of the last sale, to wit, the 6th day of May, 1896, the said "mean date" being August 1, 1894, as explained in the said motion.

XXXVI. The court erred in sustaining the exception interposed by the Galeton cotton mills in respect to the item of "insurance,"

allowed to the Huguley Manufacturing Company against the Galeton cotton mills by the special master, in his report.

XXXVII. The court erred in the decree, signed the 15th day of October, 1898, in modifying the decree of confirmation of the sale of the property with respect to the provision, fixing a lien on said property in favor of the Huguley Manufacturing Company as to any amount it might ultimately be decreed to be entitled to, and in setting aside said provisions of the decree of confirmation, and decreeing that whatever rights the Huguley Manufacturing Company might thereafter be adjudged to have, should be transferred to the net proceeds of the sale of the property, to be paid into registry of the court.

The decree was error, because it took away from the Huguley Manufacturing Company, a right which had previously been
105 fixed and vested by the decree of confirmation, and because it diminished the security for the payment of the final recovery of the Huguley Manufacturing Company, the court having directed, in said decree of the 15th day of October, 1898, that large sums of money should be paid out of said proceeds, after it should be paid into court, preferably to the claim of the Huguley Manufacturing Company.

XXXVIII. The court erred in said decree of the 15th day of October, 1898, in directing the clerk of said court to pay out of said fund, when it should be paid to him, the attorneys' fees of Dorsey, Brewster & Howell, and B. F. Abbot, amounting to $7,000.00, because, if it was proper to transfer the lien of appellant to the fund, the fund should remain intact until the lien of appellant should be satisfied as to whatever amount shall finally be adjudged in its favor.

XXXIX. The court erred in this:

That prior to the date of the final decree of foreclosure, it had been determined by the decree of the court that the Huguley Manufacturing Company was entitled to the rents and profits of the mortgaged property from the time the bondholders went into possession. But it was decreed that possession should not be restored, nor an accounting had of such rents and profits unless and until the Huguley Manufacturing Company should pay into court the sum of $10,000.00, which, it was alleged, the bondholders had paid in at the first foreclosure sale; that, from said term of said decision, an appeal was taken to the court of appeals, and by the said court, the decree, which adjudged the Huguley Manufacturing Company entitled to the rents and profits, was affirmed. That, thereupon, and in conformity with the opinion rendered by the said court of appeals, said circuit court ordered that a reference be held to ascertain the amount of rents and profits due to the said Huguley Manufacturing Company. That, while said reference was pending, and before the coming in of the master's report, the property was sold for the amount of the mortgage debt ascertained to be due; that subsequently the master reported in favor of the Huguley Manufacturing Company a large sum, to wit: $39,713.51, which, on exceptions, was reduced to $36,210.99, and this sum was applied by the court to the alleged deficiency on

the mortgage debt. That, in thus applying said sum, which, (though undetermined at the time of the sale) was then adjudged to belong to the Huguley Manufacturing Company, after the said decree of foreclosure, if it could be so legally applied, the said Huguley Manufacturing Company and the said Alabama & Georgia Manufacturing Company were deprived of the right, within some short time
106 after the decree of foreclosure, to pay the sum really due and owing upon said mortgage debt.

XL. The circuit court erred in this:

That, at the date of the sale under the last decree of foreclosure, a reference was pending under a decree theretofore made, directing a master to ascertain the sum due the Huguley Manufacturing Company for rents and profits, etc.; wherefore, said sale was made and the purchaser thereat became the purchaser, subject to all rights which the said Huguley Manufacturing Company should, after the holding of the said reference, and as the result of the findings upon said reference, be adjudged to have, together with all remedies for the enforcement of those rights; and by the action of the court, in applying said sum so found to the payment of said deficiency, said circuit court deprived said Huguley Manufacturing Company of its priority, which resulted from the fact that said sale was made pending said reference.

XLI. The court erred in the decree of the 15th day of October, 1898, in directing that all of the sum of $10,000.00, alleged to have been paid in by the bondholders, under the first decree of foreclosure, should be deducted from the purchase-money of $66,000.00, in this:

That a large part of said $10,000.00, to wit: $5,897.50, was used in paying a dividend, predicated on the amount bid, treated as cash, on two bonds of $500.00 each, belonging to D. Jannopoulo, and on twelve bonds of $500.00 each, owned by Mrs. Sallie Huguley, who declined to join in the purchase, which bonds were proved up for the whole amount, and now constitute a part of the sum for which the mortgage was foreclosed. The right of the bondholders, who so bought said 14 bonds, to a dividend out of the proceeds of the last sale on the amount invested, is not only expressly recognized in said decree of the 4th day of June, 1898, but it is provided in the 8th paragraph of said decree, as follows, to wit:

Par. 8. "In making distribution, any bonds on which a percentage has been paid in cash to former holders, and credited thereon from money paid into court under the first sale, shall be controlled by the person or persons so paying the money into court, for the purpose of reimbursement of such monies so paid and the persons so paying the money shall receive all dividends to which said bonds shall be entitled, until they are reimbursed the amount so credited on said bonds, with interest thereon at 8 per cent. per annum; and the original holders are not entitled to receive any percentage until repayment of the amount received."

To thus permit the amount so paid for on *on* said bonds, with interest, to be deducted from the purchase-money bid at the
107 second sale, and yet to direct the payment, with interest, out of the proceeds left after making said deduction, is, to pay

twice over the sum invested in or paid upon said 14 bonds, with interest.

XLII. The court erred in its decree of the 15th day of October, 1898, in deducting from the said purchase-money, the said sum of $10,000 with interest, for this:

That on the 10th day of October, 1892, the person or persons who paid said sums into court, were reimbursed and repaid by the West Point Manufacturing Company, as shown in the amended answer of the Galeton cotton mills, filed to the petition of the Huguley Manufacturing Company for an accounting for rents and profits, on the — day of June, 1893, and the evidence taken thereon.

To permit said payment now, would, if the deduction from the purchase-money, complained of in the next preceding assignment, be sustained, operate to pay three times over the said $5,897.50, invested or paid upon said 14 bonds.

XLIII. The court erred by directing in said decree of the 15th day of October, 1898, that the said sum of $10,000.00, and interest, be deducted therefrom, for the purposes therein stated, in this:

That the petition filed by L. Lanier, on the — day of October, 1898, praying a displacement of all liens on said mortgaged property, in order that he might raise the purchase-money bid for the property (about two years and a half before), by mortgaging said property, discloses on its face that the person who bid for said property, and to whom the relief was granted on said petition, was not the same person and did not represent the same persons who paid said purchase-money into court.

XLIV. The court erred in the said decree of the 15th day of October, 1898, in deducting the said $10,000.00, and interest, from the said purchase-money, in this:

That if the persons who paid said money into court were entitled to repayment of the said sum from the appellants, or either of them, the deduction of said sum, and interest, from the purchase-money did not absolve these appellants, or either of them, from the payment thereof, for that, the persons, who paid said sum into court, were not parties to nor represented in the proceedings disclosed by said decree.

XLV. The court was without jurisdiction to apply an asset, to wit, the $10,000.00, and interest, belonging to the person or persons who paid said principal sum into court, and apply it in favor of the said purchasers, as a credit on their bid, without having before it the person or persons who paid the said money into court.

108 XLVI. The court erred in deducting from the purchase-money, bid at the last sale, a large part, to wit, the sum of $3,375.18, of the $5,000.00 previously paid into court by the last purchasers, for this:

That said sum of $3,375.18 represented the following items of "costs" of taking the account of rents and profits before the master, to wit:

(*a.*) The fees of T. B. Felder, special master (in part).....	$2,500.00
(*b.*) The fees of D. O. Smith, stenographer, (in part).....	675.00
(*c.*) The fees of A. L. Waldo, accountant, (in full).....	200.00

And, together with $750.00, also forming a part of the said $5,000.00, and of which $500.00 was by way of compensation paid to the special master, and $250.00 to the stenographer, was payment in full of the sum awarded to the master, to wit, $3,000.00, and in full of the fees of the stenographer $1,000.00, except the sum of $2,500 and in full of the fees of the accountant A. L. Waldo, to wit, $200.00.

It results from the said deduction, that the Huguley Manufacturing Company, although successful in obtaining an award upon the said reference, is taxed with the entire compensation of all the officers for services in taking the said account, except $25.00.

XLVII. The court erred in said decree of the 15th day of October, 1898, in this:

Included in said sum of $5,000.00, paid into court on the last purchase, and which is deducted from the sum bid at the last sale, is the sum of $750.00, the fees (in part) of T. B. Felder, special master, and of D. O. Smith, stenographer. And yet, said sum was, by decree of the 4th day of June, 1898, deducted from the sum awarded the Huguley Manufacturing Company for "supplies and findings."

To deduct the same from the sum bid, also, was to pay said sum twice over.

XLVIII. The court erred in its decree of the 15th day of October, 1898, in this:

That there should have been paid into court the whole of said bid for the purchase of said property, to wit, $66,000.00, as of date May 6th, 1896, with interest to date so paid in according to the decree, aggregating for purchase-money, principal and interest, $77,515.54, which together with the special award for supplies and findings, and interest, ($3,658.07), decreed in favor of the Huguley Manufacturing Company, make a total sum of $81,173.61, (less such amount with interest, as could be lawfully credited on same.)

109 Whereas, the court, in said decree, required the payment into court of only the sum bid for the purchase-money, less $10,000.00, and interest thereon, and the $5,000.00, respectively, the two payments made at the first and last sales, aggregating, principal ($48,433.36), and interest ($8,665.18), only $57,098.54 actually paid in.

XLIX. The court erred in said decree of the 15th day of October, 1898, in providing that the Huguley Manufacturing Company should have no lien upon the property for its ultimate recover- in said cause, in this:

That, aside from the sum due for "supplies and findings" (for the payment of which, provision was made in the said decree,) there was no sum, (consistently with the then existing decree of the court, which had applied the sum awarded for rents and profits to the payment of the balance of the mortgage debt), due and owing to the Huguley Manufacturing Company; wherefore, said provision that said company should have no lien for its ultimate recovery could only apply to such recovery as might be awarded to the court of appeals, or under its direction, on a reversal of the decrees of the

circuit court; and this, said circuit court was without jurisdiction to provide against.

L. The court erred in its decree of the 15th day of October, 1898, in granting to L. Lanier, or to L. Lanier and associates, the relief prayed in their petition, filed on the — day of October, 1898, on the following grounds, in addition to those already assigned, and each ground is assigned as error:

(*a.*) It appears, that about two years and five months had elapsed from the date of the said sale to the filing of the said petition, and that in the meantime the Huguley Manufacturing Company was kept out of the possession of the mortgaged property, from which they had been unlawfully dispossessed under the former decree of foreclosure, which had been reversed; that said L. Lanier, or L. Lanier and associates should have been compelled to respond for the value of the use and occupation of the said property, as condition to the displacement in favor of himself, or of himself and associates, of the lien which the Huguley Manufacturing Company had, or might afterwards be adjudged to have upon the property, or any other right or equity of the Huguley Manufacturing Company.

LI. (*b.*) The court erred in the said decree of the 15th day of October, 1898, in this:

That it accorded to the said L. Lanier, or to L. Lanier and associates, valuable rights and privileges, which were not offered to him or others by the terms of the decree of foreclosure, in this:

That, by the said decree of foreclosure, the said sale was for cash, (in money or bonds); whereas, by said decree of the 15th day of October, 1898, he was given a credit of two years and six months, and further, that by the terms of the said decree of foreclosure, properly construed, the mortgagor nor its successor in interest could be deprived by the purchasers of the possession of the said property until the purchase-money was paid, and they should become entitled to a deed.

And yet, by said decree of the 15th day of October, 1898, said purchasers are relieved of all liability for said deprivation of possession.

LII. (*c.*) Said purchasers, for two years and six months, had failed to notify the court of the fact of their non-compliance with the terms of the said sale, or of any excuse for their non-compliance; wherefore, instead of granting to said L. Lanier, or L. Lanier and associates, purchasers, additional time, in which to raise the purchase-money, and removing liens and encumbrances for this purpose, said sale should have been set aside, and said purchaser or purchasers made to account for all damages resulting to any person, including those resulting to the mortgagor or its assignee, from being deprived of the use of the said property.

LIII. (*d.*) The court erred in its decree of the 15th day of October 1898, in this:

That in and by the said decree, privileges were granted and the sale confirmed, to persons other than those who bid at said sale.

LIV. (*e.*) The decree of the 15th of October, 1898, is wanting in validity, in this:

That prior to the confirmation, it changed the terms of sale.

LV. (*f.*) It is shown by the record, that a motion was made by L. Lanier, trustee, as purchaser, to confirm said sale, in June —, 1896, and a confirmation was resisted by the Huguley Manufacturing Company on the ground, amongst others, of the pendency of said reference, and because the master had not then reported; but notwithstanding such resistance, said purchasers insisted upon the confirmation of the said sale.

And yet, in said petition, filed by Lanier, in October, 1898, the fact- of the pendency of said reference, and that the master had not reported, were alleged as a reason why the terms of sale had not been complied with.

The court erred, in holding said excuse to be a valid one, as it did in granting relief on said petition.

Appellants insist, that if the pendency of said reference, and absence of a report was not a valid ground why the sale should not be confirmed, it was not a valid excuse for failing to comply with its terms; and, that the court, therefore, erred, either in
111 overruling said objections to confirmation, or in holding said excuse to be valid.

LVI. Said decrees of the 4th day of June, 1898, and of the 15th day of October, 1898, are erroneous, in that, same are not in conformity with the mandate of the U. S. circuit court of appeals, on its decisions of this cause under former appeals.

J. M. CHILTON,
W. R. HAMMOND,
Sol's for The Huguley Mfg. Co. et al., Appellants.

Acknowledgement of Service.

Due and legal service of the within assignments of errors, and of a copy of same, is hereby acknowledged, and all and further services and notice waived. This Dec. 2, 1898.

B. F. ABBOTT,
P. H. BREWSTER,
Sol's for Appellee.

Filing: Filed in clerk's office 3rd day of Dec., 1898.
O. C. FULLER, *Clerk.*

Bond.

Know all men by these presents, that we, the Alabama & Georgia Manufacturing Company, Huguley Manufacturing Company, and W. T. Huguley, as principals, and C. M. Curran and Jacob Hass, as sureties, are held and firmly bound unto J. J. Robinson, trustee, and the Galeton Cotton Mills, in the full and just sum of two hundred and fifty dollars, to be paid to the said J. J. Robinson, trustee, and the Galeton Cotton Mills, their certain attorney, executor, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this 2nd day of December, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas, lately, at a term of the United States circuit court for the northern district of Georgia, on the 4th day of June, 1898, in a suit depending in said court, between The Huguley Manufacturing Company as intervener, or petitioner, and The Galeton Cotton Mills, as respondent, a decree was rendered against the said Huguley Manufacturing Co., The Alabama & Georgia Manufacturing Com-
112 pany and W. T. Huguley; and the said Huguley Manufacturing Co., Alabama & Georgia Manufacturing Co., and W. T. Huguley, having obtained said decree and files a copy thereof in the clerk's office of the said court, to reverse the said decree in the aforesaid suit, and a citation directed to the said J. J. Robinson, trustee, and Galeton Cotton Mills, citing and admonishing them to be and appear before the United States court of appeals for the fifth circuit to be holden at New Orleans, La., within thirty days from the date thereof.

Now the condition of the above obligation is such that if the said Huguley Manufacturing Company, Alabama & Georgia Manufacturing Company, and W. T. Huguley, shall prosecute said appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

THE HUGULEY MANUFACTURING CO.,
By WM. T. HUGULEY, *Ag't and Att'y.* [SEAL.]
THE ALABAMA AND GEORGIA MFG. CO.,
By WM. T. HUGULEY, *Pres't.* [SEAL.]
WM. T. HUGULEY. [SEAL.]
C. M. CURRAN, *Surety.* [SEAL.]
JACOB HAAS, *Surety.* [SEAL.]

Sealed and delivered in presence of—
O. C. FULLER,
As to principal.

Approved by—
WM. T. NEWMAN,
U. S. Judge.

UNITED STATES OF AMERICA,
State of Georgia, Fulton County.

In person appeared before the undersigned, attesting officer, C. M. Curran, who, after being duly sworn, deposes and says, that he signed the within and foregoing bond as surety, and deponent further says that he is worth the sum of two hundred and fifty dollars above all his debts and liabilities, and above all homesteads and exemptions allowed to him by law.

C. M. CURRAN.

Sworn to and subscribed before me this Dec. 2d, 1898.

CHARLES HERMAN,
[SEAL OF N. P.] *Notary Public, Fulton Co., Ga.*

Filing: Filed in clerk's office Dec. 3, 1898.

O. C. FULLER, *Clerk.*

113 *Citation.*

UNITED STATES OF AMERICA, }
Fifth Judicial Circuit. }

The President of the United States to J. J. Robinson, trustee, and the Galeton Cotton Mills:

You are hereby cited and admonished to be and appear before the United States circuit court of appeals for the fifth circuit at New Orleans, Louisiana, within 30 days from the date hereof, pursuant to an appeal sued out and filed in the clerk's office of the circuit court of the United States for the northern district of Georgia, in the cause wherein J. J. Robinson, *et al.*, were complainants, and The Alabama & Georgia Manufacturing Co., and The Huguley Manufacturing Co., and W. T. Huguley, were defendants, in which cause the Alabama & Georgia Manufacturing Co., and the Huguley Manufacturing Co., filed a petition for restitution and accounting against the Galeton Cotton Mills, said Huguley Manufacturing Co., — Ala. & Ga. Manufacturing Co., *and* being the appellants, and said Galeton Cotton Mills and J. J. Robinson, trustee, being the appellees in said cause, to show cause, if any there be, why the decree rendered against the said Huguley Mfg. Co., Ala. & Ga. Mfg. Co., as in said decree mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Wm. T. Newman, judge of the circuit court of the United States, for the northern district of Georgia, this 2nd day of December, in the year of our Lord one thousand eight hundred and ninety-eight.

WM. T. NEWMAN,
U. S. Judge.

Service: Service acknowledged of the within and foregoing citation, and copy waived. Dec. 2d, 1898.

B. F. ABBOTT,
P. H. BREWSTER,
Solicitors for Appellees.

Filing: Filed in clerk's office Dec. 3rd, 1898.

O. C. FULLER, *Clerk.*

114 United States Circuit Court of Appeals, Fifth Circu
November Term, 1898.

MONDAY, *April* 17, 1899.

(Extract from Minutes.)

THE HUGULEY MANUFACTURING COMPANY and Alabama and Georgia Manufacturing Company, Appellants,
vs.
THE GALETON COTTON MILLS and J. J. ROBINSON, Trustee, &c., Appellees.
} No. 78

This cause was regularly called this day and after argument Mr. W. R. Hammond for appellants, the further hearing was poned until tomorrow.

November Term, 1898.

TUESDAY, *April* 18, 1899.

(Extract from Minutes.)

THE HUGULEY MANUFACTURING COMPANY and Alabama and Georgia Manufacturing Company, Appellants,
vs.
THE GALETON COTTON MILLS and J. J. ROBINSON, Trustee, &c., Appellees.
} No. 78

This cause came on again to be heard this day, and after furth argument by Mr. W. R. Hammond and Mr. John M. Chilton appellants, and Mr. P. H. Brewster for appellees, was submitted the court.

115 November Term, 1898.

MAY 16, 1899.

(Extract from Minutes.)

THE HUGULEY MANUFACTURING COMPANY and Alabama and Georgia Manufacturing Company, Appellants,
vs.
THE GALETON COTTON MILLS and J. J. ROBINSON, Trustee, &c., Appellees.
} No. 78

This cause came on to be heard on the transcript of the reco from the circuit court of the United States for the northern distri of Georgia, and was argued by counsel.

On consideration whereof. It is now here ordered, adjudged a decreed by this court that the decree of the said circuit court this cause be, and the same is hereby affirmed with costs.

116 THE HUGULEY MANUFACTURING COMPANY and Alabama Manufacturing Company, Appellants,
versus
GALETON COTTON MILLS and J. J. ROBINSON, Trustee, Appellees.
No. 798.

The appellants feeling themselves aggrieved by the decision in the above-entitled cause, respectfully pray a rehearing on the following grounds:

First.

The court holds that we lost the right to possession, and therefore the rents, and profits, because we had not complied with the terms of the decree below, requiring the payment of $10,000.00 as a condition to possession.

The court below required the payment of the $10,000.00 as a condition—not to possession alone, but also to an accounting, as witness the refusal of Julius Brown, master, under the orders of the lower court, refusing to permit us to make proof before him of the rents and profits when he was directed to ascertain the true amount of the mortgage debt. The decree itself, of the court below, shows beyond question that prepayment of said sum was a condition precedent to both possession and an accounting.

We appealed (2nd appeal) from the decree of foreclosure, so
117 as to be sure we were appealing from a final decree, and assigned as one of the errors, that part of the decree awarding restitution and accounting, which made prepayment a condition.

This court seemingly misconstrued the court below. Because, this court affirmed its decision, and yet said in its opinion that of course the lower court would proceed to take an account of the rents and profits.

As to the prepayment of the $10,000.00 as a condition to possession, it intimated but did not decide that there might exist circumstances that would make it proper. But it did not decide, either that the court below erred or did not err in either of these respects. If there had been a judgment here in conformity to the opinion delivered, the cause must have been reversed, because the opinion stated that of course an accounting would be had without prepayment, whereas the lower court had decreed it should not be had without prepayment.

But the inconsistency between the opinion and result—an affirmance—is apparent only. There was no real inconsistency, for the reason that this court said, that all these matters were still within the power of the lower court for subsequent disposition because of the power reserved at the foot of the decree to make such other or further orders as might be necessary.

When the case went back with this opinion, neither Judge Newman (nor counsel), we say it deferentially, knew how to construe it except in the way that has been stated, to wit: An intimation in the opinion, that the court below had erred in requiring prepayment as a condition precedent, but that the error should not operate a

reversal because of the right reserved at the foot of the decree
118 to do what was proper both as respects the accounting and the sums comprising the $10,000.00, and whether we should be finally required to pay for them.

Thereupon, on the intimation given in the opinion here, the court below receded from its former decree, by directing an accounting without rents and profits; and as the judgment which required payment for one purpose required it for both, it was treated by the court, the solicitors for the bondholders, and solicitors for the Huguley Manufacturing Company, as vacated as a whole. This is absolutely demonstrated by the fact that the court again recognized the petition of the Huguley Mfg. Co., as still pending and without objection from the bondholders that prepayment was still necessary, made a new order of reference without prepayment. Then, subsequently, the bondholders' solicitors filed their motion as to so much of the $10,000.00 as constituted the court costs by which it sought to tax it against us—but not as a condition precedent. Nothing more was said or thought of any condition precedent until the cause came back here on this appeal.

The court provided in its decree of June 4th, 1898, a priority as holders of the bonds on which they had previously paid their dividend of say 80%. Were we to pay it twice, and were we to pay it as a condition precedent, to be returned to the bondholders when the court had made a different disposition of it in its decree?

We respectfully submit that when this court, by its opinion, in effect declared that the decree that required prepayment was wrong in that at all events we were entitled to an accounting of the rents and profits, and furthermore that it was not final but inter-
119 locutory because controlled by the right reserved at the foot of the decree; and when it was, as matter of law, vacated by making another decree at direct variance with it, the court should not consider our failure to respond to a part of the former decree, as a bar to our rights, when, acting upon the construction that everybody put upon the opinion of this court, it was not thought of, to say nothing of not being insisted upon, as a bar, in the lower court.

When the decree, which was entire, was, in deference to the opinion of this court, in effect vacated by making a directly opposite decree in respect to one of its elements as important as the other; and was treated by the court and parties as no longer subsisting by arranging for the same thing, otherwise, ought we to be held bound here, in an appellate court, for the first time and when the point was not presented in the court below?

And then too, held to a forfeiture for non-payment of $10,000.00, when they owed us $35,000.00, and held, finally, on a debt we did not owe. We respectfully submit it would be a denial of justice, to require us to pay a debt we did not create, as a condition for restitution of property which, in legal contemplation at least, as Judge McClellan says in *Ex parte,* * * * they "wrongfully received."

Second.

When the court holds that the mortgage, differing from an English mortgage, was a mere security for a debt, we respectfully submit that its decision that prior to a foreclosure, the rents may be intercepted to supplement the security, even when it is shown to
129 be deficient, it is not in harmony with the decisions of the Supreme Court of the United States, in its construction of such mortgages, and with the decisions and statutes in Georgia. There are numerous decisions in Georgia opposed to the rule laid down by the court, and the only one cited was so decided because of peculiar facts which would, if the decision had been otherwise, have enabled a fraud to be perpetrated by the mortgagor.

Third.

If every question of rents and profits in this record was omitted, still we had a right, we submit, to question the legality of the confirmation of the sale. We have had no response from the court to our insistence that the action of the court was in effect to change the sale. Is not the question presented? No objection, that we are aware of just now (but we write in the absence of the appellee's brief), is made that we are not in a position to contest it, unless it be we accepted a sum awarded us for converting some supplies and findings. These had nothing to do with the mortgage. The sum paid in covered the amount allowed us for this property. Does the court hold that acceptance of this sum (by consent too of the other side) cuts us off from our contention that the court simply gave the purchaser the rents for over two and one-half years? Are we not entitled to a response from your honors upon these important questions, where *they* are perhaps many determinative of the rights of the parties?

Conceding, however, that the payment of this $10,000.00 was a condition precedent to the right to demand and receive possession of the property, it does not at all follow that the exercise of
131 that right has been forfeited or lost. The Huguley Co. has, it is true, applied for possession and restitution, but the circuit court has not in passing on that application refused to decree restitution. It ordered an accounting, but made no decree as to possession, probably because the property had been sold under the second decree before the accounting had been taken. Now, we submit that the right still exists, unless it was cut off by the sale of May 6, 1896, made under the decree.

As to this sale, we submit that it has never been completed. The property was struck off to L. Lanier, "trustee of the mortgage bondholders," for $60,000.00 subject to a lien for whatever amount might be found due the Huguley Mfg. Co. for rents and profits under the accounting. His bid, therefore, amounted to $60,000.00, plus the amount that might be found due on the accounting, which, according to the record, is shown to amount to $35,857.53.

It now turns out that the bondholders refused to join in the purchase, as appears from Lanier's petition presented to the court on

the 22d day of Sept., 1898. (Last printed Rec. pp. 78–80), in which the fact is stated. He then asked to have the approval of the sale of 1896 set aside, and for a new decree, allowing him to pay in the cash part of his bid, $66,000.00, and to have the sale confirmed to him individually, free of the lien established by the former decree in favor of the Huguley Co., thus relieving himself of $35,857.53, part of the amount of his bid.

We submit that the circuit court had no power to do this—that the sale of 1896 was abandoned by the purchaser and annulled by the court, and that the court had no authority or jurisdiction
122 to confirm the sale afterwards for a less price and upon different terms in 1898, as it did by its decree. (Last printed Rec. pp. 84–88.)

Laying aside all other questions in the case, we submit that the sale should be set aside. If this is done, the Huguley Co. may still pay in the $10,000, as the right to do so may be exercised at any time before a legal sale takes place, and discharge the decree by paying in the amount thereof.

It is to be noted here that the final decree of Judge Newman (last printed R., pp. 74–78), which this court has affirmed, does not assess the $10,000.00 against the Hugul-y Co., but directs it to be paid by the bondholders. We, therefore, assume that the comments of your honors in this branch of the case are not intended to control the decision of the appeal.

Your honors have had this cause before you so often and been troubled with long arguments, both oral and in print, so frequently, that if it were clear, though carried to an appellate jurisdiction, would not present this petition. But fearful this is our "last chance," we respectfully ask a reconsideration.

——— ———,
——— ———,
Solicitors for Appellant.

I certify that the foregoing petition is, in my opinion, well founded in point of law.

WM. GRANT, *Counsel.*

123 November Term, 1898.

THURSDAY, *June 1st*, 1899.

(Extract from Minutes.)

THE HUGULEY MANUFACTURING CO. ET AL. }
vs. }
THE GALETON COTTON MILLS. }

Ordered, that the petition for rehearing filed in this cause, be, and the same is hereby denied.

124 United States Circuit Court of Appeals, Fifth Circuit, at New Orleans, Louisiana.

THE HUGULEY MANUFACTURING CO. and *and* WILLIAM T. Huguley and The Alabama & Georgia Mfg. Co., Appellants,
vs.
THE GALETON COTTON MILLS and J. J. ROBINSON, Trustee, *et al.*
} No. 798.

The Huguley Manufacturing Company and William T. Huguley and The Alabama and Georgia Manufacturing Company, appellants in the original appeal in the above-entitled cause, and interveners in the petition filed in the said cause, praying for an accounting for rents, issues and profits, etc., conceiving themselves ag-rieved by the orders and decrees entered in this said cause on the 16th day of May, 1899, by the honorable the United States court of appeals for the fifth circuit, at New Orleans, La., do hereby appeal from the said orders and decrees to the Supreme Court of the United States of America, at Washington, D. C., and they pray,

That this, their appeal may be allowed, and that a transcript of the record and proceedings and papers upon which the said orders and decrees were made, duly authenticated, may be sent to the Supreme Court of the United States, at Washington, D. C.

JOHN T. MORGAN,
SAUNDERS & GURLEY,
Of Counsel.

125 *Order.*

It is ordered that the foregoing petition for appeal be allowed returnable within thirty days from this date, on appellants giving bond according to law in the sum of seven hundred and fifty dollars.

Although seriously doubting the right of appeal I allow the appeal in the case because the year of limitation is so nearly expired that there is no time left in which to apply to the Supreme Court to determine the right in case of refusal of the appeal.

New Orleans, La., May 12th, 1900.

DON A. PARDEE,
Circuit Judge.

126 Know all men by these presents, that we The Alabama & Georgia Manufacturing —, The Huguley Manufacturing Company and William T. Huguley as principals and The American Bonding & Trust Co., of Baltimore City, Baltimore, Md., as sureties, are held and firmly bound unto J. J. Robinson, trustee, and The Galeton Cotton Mills in the full and just sum of seven hundred and fifty dollars to be paid to the said J. H. Robinson, trustee and The Galeton Cotton Mills, and L. Lanier their certain attorney, executors, administrators, or assigns: to which payment well and

truly to be made, we bind ourselves our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this ninth day of May in the year of our Lord one thousand nine hundred (1900.)

Whereas, lately at a term of the United States circuit court of appeals, for the fifth circuit, on the 16th day of May, 1899, in a suit depending in said court, between The Huguley Manufacturing Company, as intervener, or petitioner, and The Galeton Cotton Mills *et al.* as respondent- a decree was rendered against the said Huguley Manufacturing Company and the said Alabama & Georgia Manufacturing Company and the said The Huguley Manufacturing Company, The Alabama & Georgia Manufacturing Company and William T. Huguley, having obtained an appeal to the U. S. Supreme Court and filed a copy thereof in the clerk's office of the said court to reverse the said decree in the aforesaid suit, and a citation directed to the said J. J. Robinson, trustee, and Galeton Cotton Mills citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now the condition of the above obligation is such that if the said The Huguley Manufacturing Company, The Alabama & Georgia Manufacturing Company and William T. Huguley shall prosecute said appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

THE HUGULEY MANFG. COMPANY,
By WILLIAM T. HUGULEY, [SEAL.]
Ag't & Att'y.
THE ALABAMA & GEORGIA MANFG. CO.,
By WM. H. H. HUGULEY, *Pres't* [SEAL.]
WM. T. HUGULEY. [SEAL.]
[SEAL.] THE AMERICAN BONDING & TRUST COMPANY OF BALTIMORE CITY,
By W. C. DUFOUR, *Vice-President.*

Attest: ADOLPH ROQUETTE, *Ass't Sect.*

Sealed and delivered in the presence of—

—— ——.

4 cents documentary stamps.

Approved:
DON A. PARDEE,
Circuit Judge.

Endorsed: Filed May 15, 1900. J. M. McKee, clerk.

127 United States Circuit Court of Appeals, Fifth Circuit, November Term, 1898.

THE HUGULEY MANUFACTURING COMPANY and ALABAMA & GEORGIA MANUFACTURING COMPANY, Appellants,
v.
THE GALETON COTTON MILLS and J. J. ROBINSON, Trustee, &c., Appellees.
} No. 798.

Appeal from the circuit court of the United States for the northern district of Georgia.

Before Pardee, McCormick, and Shelby, circuit judges.

SHELBY, circuit judge, delivered the opinion of the court.

On January 1st, 1884, the Alabama & Georgia Manufacturing Company executed a mortgage or deed of trust to J. J. Robinson and two others to secure $65,000.00 of bonds issued by it that day. Subsequently, the property embraced in the mortgage was sold under a decree of a State court subject to the mortgage. Under this sale the Huguley Manufacturing Company became the purchaser and owner of the property, subject to the incumbrance of the mortgage for $65,000.00. It was placed in possession of the property. A bill was filed in the circuit court of the United States for the northern district of Georgia to foreclose the mortgage, a decree of foreclosure rendered, and on appeal to this court the decree was reversed. 13 U. S. App. 359; 56 Fed. Rep. 690. The decree of foreclosure being vacated by reversal, the circuit court granted a petition on the part of the Huguley Manufacturing Company to restore it to the possession of the property, upon condition, however, that it pay into court $10,000.00, which had been paid by the purchasers under the now vacated foreclosure sale. This condition the Huguley Manufacturing Company did not comply with, but resisted. It took an-
128 other appeal to this court and the decree of the circuit court was affirmed. 30 U. S. App. 683; 72 Fed. Rep. 708.

At the first foreclosure sale the property was purchased for the bondholders, who organized a corporation under the name of the Galeton Cotton Mills. This corporation was placed in possession of the property under the first decree of foreclosure and held the same pending the appeal and after the reversal of the decree, and upon the second foreclosure became purchasers again and have remained continuously in possession, operating the mills on the property. The Galeton Cotton Mills were in possession of the property under the first decree of foreclosure for a period of three years and eight months. The real controversy in the present litigation is about the rents of the property during this period. The net rents have been ascertained to be $28,234.00. At the last foreclosure sale a balance was left due, after applying the net purchase-money to the mortgage debt, of $33,414.21. The Huguley Manufacturing Company contends that the possession of the purchasers at the foreclosure sale, the decree afterwards being reversed, was illegal and wrongful, and that

in stating the account of reference the company was not to be treated as a mortgagee in possession, but that a stricter rule should be applied on the accounting, and that the rents are the property of the Huguley Manufacturing Company and should be paid to it. The Galeton — Mills, on the contrary, contends that its possession was not tortious, but legal, that it should be treated and charged only on the accounting as a mortgagee in possession, and that the net rents should not be paid to the Huguley Manufacturing Company, but should be applied to the payment of the amount left unpaid on the mortgage. These are the only substantial questions in the case. The material assignments of error relate either to the statement of the account before the master or the application of the rents to the payment of the mortgage debt. We are relieved from stating these questions and the facts relating to them more minutely by the opinions of the learned judge who rendered the de-
129 crees appealed from in the circuit court. These opinions will appear in the report of this case.

1. The possession of the purchasers at the first foreclosure sale was not wrongful in the sense that such possession made them trespassers. The decree was rendered by a court having jurisdiction of the case. The mortgage foreclosed was valid. The decree was binding and not subject to collateral attack. It was valid and effectual to place the purchasers in possession and to protect them in possession till it was reversed. 2 Jones on Mortgages (5th ed.), secs. 1587, 1588. It was reversed by this court, and the circuit court then granted an order of restitution, but upon condition that the Huguley Manufacturing Company would pay into court the sum of $10,000.00 which had been paid by the purchasers at the date of their purchase. This court, on appeal, affirmed this condition. The Huguley Manufacturing Company did not pay the $10,000.00 and so were not entitled to the possession by the terms of the order made by the circuit court and affirmed by this court. From its inception the possession in question*ed* was sanctioned by a decree of the court having jurisdiction of the parties and the property. The reversal of the decree does not make the purchasers under it trespassers. The purchasers in this case, on the facts stated, are entitled to the benefit of the equitable rules governing mortgages in possession and the account should be stated and the rents applied by such rules.

Dutcher *v.* Hobby, 86 Ga. 198;
Brobst *v.* Brock, 10 Wal. 519;
Lane *v.* Holmes, 55 Minn. 379;
Townshend *v.* Thomson, 139 N. Y. 152.

2. Under the English law, which has been substantially adopted in many of the States, a mortgage on real estate is of a dual nature. In a court of law the mortgagee is regarded as the owner; he possesses the legal title and can recover the estate in ejectment. In a court of equity the mortgage is deemed only a security for the debt described in it. Welsh *v.* Phillips, 54 Ala. 309; 3 Pomeroy Eq. Jur.,

sec. 1184; 1 Jones on Mortgages (4th ed.), sec. 11. In Geor-
130 gia, as in several of the States, the English view does not pre-
vail. The legal title does not pass to the mortgagee. The mortgage, both at law and in equity, is always deemed a mere security for debt. This was settled in Georgia many years ago by judicial decision. Davis *v.* Anderson, 1 Ga. 176; Vason *v.* Bell, 56 Ga. 269. It is now confirmed by statute: "A mortgage in this State is only security for a debt, and passes no title." Civil Code of Ga., sec. 2725. In the argument of this case it was urged with much earnestness that these decisions and the statute are controlling in this case and that their proper application to the case will give to the appellant the rents and profits of the property.

It must be conceded as established by authority as a general principle, that a mortgagee in possession, whether in person, by trustee, or receiver, is in equity accountable for the rents and profits "and must apply them to the reduction of the mortgage debt." 2 Jones on Mortgages (5th ed.), sec. 1114. This is a matter exclusively of equity jurisdiction and is for the benefit of the mortgagor. By such application of the rents his debt is paid or reduced so as to lessen the burden of redemption. It is, also, nothing more than is due to the mortgagee; he is entitled to be paid. In cases where the corpus of the property is not sufficient to pay the debt and where the mortgagor is insolvent, the mortgagee has no other means of obtaining full payment except to secure the rents. As between an insolvent mortgagor and the mortgagee who has collected rents, the property mortgaged being insufficient to pay the debt, the rents must be applied to extinguish the debt. The mortgagee would not, in equity, be permitted to retain the rents and not apply them to the debt. In no jurisdiction would he be required to pay the rents to the mortgagor, his debtor, and leave the debt unpaid. As the mortgagor, under such circumstances, could not prevent the rents being applied to the payment of his debt, he cannot by selling his equity of redemption to another invest him with a right he did not have himself. The purchaser of the mortgagor's right of redemption can have no greater rights than the mortgagor.

In cases like this the equitable right of the mortgagee to
131 apply the rents to the payment of his claim seems undisputed by the general practice and principles of equity jurisprudence. This we understand, if not conceded by the appellant, is not denied, but the contention is that these principles are not applicable to a mortgage controlled by the laws of Georgia. Is there anything in the Georgia law in conflict with these principles? Does the statute which makes a mortgage only a security for debt, intend to make it any less a security, in equity, than other mortgages on real estate? Under the English rule a mortgage on real estate is in equity always regarded as a mere security for debt. It is only at law that the mortgagee is regarded as the owner of the legal title. The Georgia statute changes the effect in this regard of a mortgage at law, but it is only a legislative recognition of the equitable rule which views a mortgage as merely a security for debt.

It is held in Hart *v.* Respess, 89 Ga. 87, as stated in the syllabus:

"While the mortgagee has no legal title to the rents and profits, he has an equitable claim upon the same in so far as they may be needed to discharge so much of the mortgage debt as cannot be realized out of the corpus of the property, the facts of the case indicating that the debtors are insolvent and the creditors likely to sustain loss."

The decree of the circuit court is affirmed.

132 *Certificate.*

I, J. M. McKee, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing 132 pages numbered from *a* to 131, inclusive, contain a true copy of the record upon which the cause was heard in the United States circuit — of appeals, and all the proceedings had in said court, including the opinion of the court, in the case of The Huguley Manufacturing Company and Alabama and Georgia Manufacturing Company, appellants, *vs.* The Galeton Cotton Mills and J. J. Robinson, trustee, &c., appellees, No. 798, as the same remains upon the files and records of said United States circuit court of appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of New Orleans this 15th day of May, A. D. 1900.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

J. M. McKEE,
Clerk of the U. S. Circuit Court of Appeals, Fifth Circuit.

133 THE UNITED STATES OF AMERICA, }
Fifth Judicial Circuit. }

The President of the United States to Galeton Cotton Mills, Greeting:

You are hereby cited and admonished to be and appear before the United States Supreme Court at Washington, D. C., within 30 days from the date hereof, pursuant to an appeal sued out and filed in the clerk's office of the court of appeals of the United States for the fifth circuit in the cause wherein The Huguley Manufacturing Company and Wm. T. Huguley and The Alabama and Georgia Manufacturing Company are appellants and The Galeton Cotton Mills and J. J. Robinson trustee and L. Lanier are appellees No. 798 of the docket of the United States circuit court of appeals for the fifth circuit to show cause, if any there be, why the judgment rendered against the said appellants as in said petition of appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Don A. Pardee judge — circuit court of the United States, for the fifth circuit this 15th day of May in the year of our Lord nineteen hundred.

DON A. PARDEE, *Judge.*

134 [Endorsed.]

Marshal's Return.

Served a true copy of the within, personally, on the Galeton Cotton Mills by serving L. Lanier, president, this May 28th, 1900, at the hour of six-45 o'cl. p. m.

J. H. NOLAN.

GEORGIA, }
Troup County. }

Personally before me B. H. Hill a notary public in and for said State & county, came J. H. Nolan who being duly sworn deposes & says that he served on May 28th, 1900, a true copy of the within citation on the Galeton Cotton Mills, L. Lanier president, personally at 6.45 p. m. of said date.

J. H. NOLAN.

Sworn to and subscribed before me this May 28, 1900.

[Seal of B. H. Hill, Notary Public, Troup County, Ga.]

B. H. HILL, *N. P.*

135 THE UNITED STATES OF AMERICA, }
Fifth Judicial Circuit. }

The President of the United States to L. Lanier, Greeting:

You are hereby cited and admonished to be and appear before the United States Supreme Court at Washington, D. C., within 30 days from the date hereof, pursuant to an appeal sued out and filed in the clerk's office of the court of appeals of the United States for the fifth circuit in the cause wherein The Huguley Manufacturing Company and Wm. T. Huguley and The Alabama and Georgia Manufacturing Company are appellants and The Galeton Cotton Mills and J. J. Robinson trustee and L. Lanier are appellees No. 798 of the docket of the United States circuit court of appeals for the fifth circuit to show cause, if any there be, why the judgment rendered against the said appellants as in said petition of appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Don A. Pardee judge — circuit court of the United States for the fifth circuit this 15th day of May in the year of our Lord nineteen hundred.

DON A. PARDEE, *Judge.*

136 [Endorsed.]

Served a true copy of the within on L. Lanier, personally this May 28, 1900, at the hour of six-45 p. m. this May 28th 1900.

J. H. NOLAN.

GEORGIA, }
Troup Co. }

Personally before me B. H. Hill a notary public in and for said State & county comes J. H. Nolan who being duly sworn deposeth & says that he served on May 28th, 1900 a true copy of the within citation on L. Lanier personally at 6.45 p. m. of said date.

J. H. NOLAN.

Sworn to and subscribed before me this May 28, 1900.

[Seal of B. H. Hill, Notary Public, Troup County, Ga.]

B. H. HILL, *N. P.*

137 THE UNITED STATES OF AMERICA, }
Fifth Judicial Circuit. }

The President of the United States to J. J. Robinson, trustee, Greeting:

You are hereby cited and admonished to be and appear before the United States Supreme Court at Washington, D. C., within 30 days from the date hereof, pursuant to an appeal sued out and filed in the clerk's office of the court of appeals of the United States for the fifth circuit in the cause wherein The Huguley Manufacturing Company and Wm. T. Huguley and The Alabama and Georgia Manufacturing Company are appellants and The Galeton Cotton Mills and J. J. Robinson trustee and L. Lanier are appellees No. 798 of the docket of the United States circuit court of appeals for the fifth circuit, to show cause, if any there be, why the judgment rendered against the said appellants as in said petition for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Don A. Pardee judge — circuit court of the United States, for the fifth circuit this 15th day of May in the year of our Lord nineteen hundred.

DON A. PARDEE, *Judge.*

138 [Endorsed.]

Marshal's Return.

Served a true copy of the within on J. J. Robinson, trustee, personally, this May 30th 1900, at the hour of ten & 20 o'cl. a. m.

J. H. NOLAN.

GEORGIA, }
Troup County. }

Personally before me B. H. Hill a notary public in and for said State & county, comes J. H. Nolan who being duly sworn, deposiaes & says that he served on May 30th 1900, a true copy of the within

citation on J. J. Robinson, trustee, personally, at ten-20 o'cl. a. m. of said date.

J. H. NOLAN.

Sworn to and subscribed before me, this May 30th, 1900.

[Seal of B. H. Hill, Notary Public, Troup County, Ga.]

B. H. HILL, *N. P.*

Endorsed on cover: File No. 17,813. U. S. circuit court of appeals, 5th circuit. Term No. 94. The Huguley Manufacturing Company, William T. Huguley and The Alabama & Georgia Manufacturing Co., appellants, *vs.* The Galeton Cotton Mills, J. J. Robinson, trustee, and L. Lanier. Filed June 25, 1900.

94

PART I

TRANSCRIPT OF RECORD

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE FIFTH CIRCUIT AT NEW ORLEANS, LA.

No. 97

THE ALABAMA & GEORGIA MANUFACTURING COMPANY, HUGULEY MANUFACTURING COMPANY AND WILLIAM T. HUGULEY,

Appellants

versus

J. J. ROBINSON, Trustee, Etc.,

Appellee

APPEAL FROM CIRCUIT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF GEORGIA.

JOHN M. CHILTON,
WILLIAM S. THORINGTON,
Solicitors for Appellants.

THE CHASE CO., WASHINGTON

(17,813)

SUPREME COURT OF THE UNITED STATES

October Term, 1901

No. 94

THE HUGULEY MANUFACTURING COMPANY, WILLIAM T. HUGULEY AND THE ALABAMA & GEORGIA MANUFACTURING COMPANY,
Appellants

versus

THE GALETON COTTON MILLS, J. J. ROBINSON, TRUSTEE, AND L. LANIER

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

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UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE FIFTH CIRCUIT AT NEW ORLEANS, LA.

No. 97.

THE ALABAMA & GEORGIA MANUFACTURING COMPANY, HUGULEY MANUFACTURING COMPANY AND WILLIAM T. HUGULEY,

Appellants

versus

J. J. ROBINSON, TRUSSEE, ETC.,

Appellee.

APPEAL FROM CIRCUIT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF GEORGIA.

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Bill of Complaint.

United States of America, Northern District of Georgia.

To the Judges of the Circuit Court of the United States for the Northern District of Georgia: J. J. Robinson as trustee for the purposes hereinafter stated who avers himself to be a citizen of and residing in the State of Alabama brings this his bill against the Alabama & Georgia Manufacturing Company, a corporation created under and by virtue of the laws of the State of Georgia and a resident and citizen of said Noorthern District of Georgia; and against the Huguley Manufacturing Company, a corporation created under the laws of said State of Georgia, and a resident and citizen of said State of Georgia and of the Northern District of said State; and against W. T. Huguley, who your orator avers to be a citizen of said State of Georgia and residing within said Northern District of Georgia.

And thereupon your orator complains and says: That on the 2d day of January, 1884, the said Alabama & Georgia Manufacturing Company executed and delivered to said W. T. Huguley, W. C. Yancey and to your orator as trustees, a certain deed of trust covering and conveying to said persons named and to orator all the property of said Alabama & Georgia Manufacturing Company upon the terms and upon the trusts therein stated for the purpose of securing certain negotiable bonds of said company in principal sum of sixty-five thousand dollars and interest thereon, which deed of trust was accepted by said trustee and duly recorded. A copy of said deed of trust is hereto attached marked exhibit A, as a part of this bill and for certainty as to its provisions the same is hereby referred to.

Said bonds herein named were duly issued by said Alabama & Georgia Manufacturing Company and sold or otherwise disposed of and are now held by various persons and corporations.

The said Alabama and Georgia Manufacturing Company is insolvent and has ceased to do business and has ceased to keep an office in West Point, Georgia, or elsewhere for the transaction of business. That under and by virtue of a de-

cree in chancery issuing out of the Superior Court of Troup county, Georgia, at term, 1888, all the property of said Alabama and Georgia Manufacturing Company covered by said deed of trust was sold by the sheriff of Harris county, Georgia, on the 1st Tuesday in January, 1890, and purchased by certain persons who afterwards as orator is informed conveyed or otherwise disposed of the same to said Huguley Manufacturing Company, defendant herein. And said last named corporation is now in possession of the same, claiming the said property under said sale. Said sale was made subject in all respects to the rights and lien of your orator as trustee for the holders of said first mortgage bonds. Said W. T. Huguley, defendant herein and named as one of the trustees for said bondholders, claimed at the time of said sale to be interested in the purchase of said property and now claims also to be interested in the property and assets of said Huguley Manufacturing Company. He is interested adversely to your orator as the trustee of said bondholders. In said bond it is provided among other things as follows:

"And it is hereby expressly agreed by the said company with each and any holder of this bond that in case of the non-payment of any interest coupon hereto attached if such default shall continue for six months after maturity and demand of payment, the principal of this bond shall become immediately due and collectable."

Among other things it is provided in said deed of trust for further security of the holders of said bonds and coupons that said Alabama and Georgia Manufacturing Company shall keep said property covered by said deed of trust insured against loss by fire in good responsible companies to the extent of sixty-five thousand dollars ($65,000). Said company has failed to keep said insurance as provided, as orator is informed.

The said Alabama and Georgia Manufacturing Company has failed to pay the interest on said bonds or a large majority of the falling due July 1, 1890, and has failed to pay any of the interest coupons falling due January 1, 1891, and more than six months has elapsed since the said July coupons fell due and they still remain unpaid. No money was on

deposit at the place of payment at the time said July coupons fell due and none deposited within six months thereafter at the place of payment to pay same, and all or nearly all of said July coupons remain unpaid, as orator is informed by the holders thereof.

The said W. C. Yancey has departed this life since the execution and delivery of said deed of trust.

Orator has been notified since the expiration of the six months after the said July coupons fell due by a majority of said bondholders in amount of their election to treat the whole of said principal sum named in the bonds as due under provisions of said bonds; and orator has been requested to begin proceedings to secure the property pledged for the payment of said indebtedness and he deems it to the best interest of the bondholders of said bonds that he should do so.

The premises considered the orator hereby waiving all discovery made under oath from each and all of said defendants he prays:

1st. That an account be taken of the holders of said bonds and the amount for principal and interest due them and each of them.

2nd. That orator may have a decree in his favor against the said the Alabama and Georgia Manufacturing Company; that it shall pay said sums so found to be due your orator as trustees for such bondholders, together with all costs of suit including his reasonald solicitors fees by a short day to be named by this honorable court for that purpose; that in default the said Alabama and Georgia Manufacturing Company and any and all persons claiming under it be absolutely debarred and forever foreclosed of and from all equity or redemption in and to said mortgaged premises and every part thereof, and that it shall deliver up to orator all papers, deeds and other writings in its power, custody or control relating to or covering said premises.

And that in default of payment of said sums by a day to be appointed, that your orator as trustee or such other person as may be named by the court in its decree and acting under and in pursuance thereof shall sell the property embraced in said deed of trust upon such notice and terms as the court may direct, and that the proceeds of such sale be under such decree paid to the persons entitled thereto.

3rd. That a receiver be appointed to take possession of and hold said property, preserve and protect the same until the final decree is had in this cause.

4th. That said defendants and each of them, their agents and servants be enjoined from in any manner interfering with said property until the further order of the court.

5th. That your orator may have such other and further relief as to the court may seem meet and proper under the facts of the cause.

6th. That the writ of subpoena issued and be served on each of said defendants commanding them and each of them at a certain day and under a certain penalty therein to be inserted personally to be and appear before this court, and then and there to stand to, abide and perform such order, direction and decree as may be made therein. And your orator will ever pray etc.

DORSEY, BREWSTER & HOWELL,
N. D. DENSON,
ABBOTT & SMITH,
Complainants Solicitors.

United States of America, Northern District of Georgia.

Personally comes J. J. Robinson, who on oath says that the statements made in the foregoing bill are true of his own knowledge except where made upon information and belief and as to such he believes them to be true.

J. J. ROBINSON.

Sworn to and subscribed before me this 20 day of January, 1891.

(SEAL) O. C. FULLER,
U. S. Circuit Court Commissioner, N. D. of Ga.

Exhibit "A."

STATE OF GEORGIA,
Troup County.

At a meeting of the board of directors of the Alabama and Georgia Manufacturing Company held at the office of said company in the city of West Point, State of Georgia, on the 17th day of October, 1883, a majority of said board of directors being present the following resolutions was adopted:

Whereas, the creditors of the company, namely: George Huguley, W. T. Walker, W. H. Huguley, W. H. Huguley & Co., and others have signified their willingness to accept in lieu of their present note against the company first mortgage bonds of the company.

It is ordered by the board of directors of the company that the officers of this company be and they are hereby authorized to issue bonds of the company not to exceed the amount of sixty-five thousand dollars, said bonds to bear date on the (1st) 7th day of January, 1884, and to run twenty years from date with the option of the company to pay off or call in any of said bonds after the expiration of five years from the date of the same, said bonds to bear interest at the rate of eight per cent per annum, with interest coupons attached payable semi-annually, principal and interest payable at the office of the company in West Point, Georgia. And to secure the payment of the principal and interest of said bonds, the officers of the company be and they are hereby authorized and empowered to execute a *first mortgage* on all of the real property of the company, including mill, machinery, fixtures and all appurtenances thereto attached, either to the holders of said bonds, or to trustee for their benefit as may agreed upon. Said bonds and mortgage to be signed by the president under the seal of the company, and countersigned by the secretary and treasurer. Said bonds to be issued in such denomination as may be determined upon by the officers of the company. Which said resolution was passed and adopted by virtue of the authority conferred at an annual meeting of the stockholders of said company held on the 27th day of July, 1881, and whereas the officers of said company to wit: W. H. Huguley first president, and W. H. Huguley & Co., its treasurers, and W. T. Huguley, its secretary, in conformity with said resolutions have issued the bonds of said company to the amount of sixty-five thousand dollars; each of said bonds for the sum of five hundred dollars due and payable on the (1st) 7th day of January, 1904, with interest coupons attached payable semi-annually on the 7th day of January and July of each year, for the sum of twenty dollars each, the principal and interest of said bonds payable at the office of the company in West Point, Georgia.

In which said bonds the said company reserve the right and the privilege to pay off and call in all of or any of said bonds and coupons then due and unpaid after the expiration of five years from the date of their issuance, which said bonds are numbered from one to one hundred and thirty inclusive.

Now this instrument made and entered into on this the first day of January, 1883, between the Alabama and Georgia Mfg Co. of the first part, and J. J. Robinson, W. C. Yancey and W. T. Huguley as the trustees of the holders of said bonds, of the second part, witnesseth, That the Alabama and Georgia Manufacturing Company, the said party of the first part, for and in consideration of the premises and for the purpose of securing the payment of principal and interest of said bonds, and the sum of one dollar in hand paid by the party of the second part, hath bargained, sold, transferred and conveyed and by these presents doth bargain, sell, transfer and convey to the said J. J. Robinson, W. C. Yancey and W. T. Huguley, as trustees aforesaid, their survivors and successors, the following real estate to wit: All of a large Island in the Chattahoochee River designated as Island No. Six (6) containing one hundred and forty-three (143) acres more or less; also Island No. Nine (9) containing seven acres more or less, also a small island between Islands numbers nine and six upon which the east end of the factory building rests, containing four acres more or less. All of the three above described islands being in the Twentieth (20) District of Harris county, Georgia.

Also all that tract or parcel of land lying on the west side of the Chattahoochee river opposite the above described islands bounded on the east by said river beginning at a point on the west bank of said river nearly opposite the center of the seven-acre island at a black gum, at or near a place known as Sulb's corner—thence a straight line to a point where the land owned in 1868 by Mrs. Freeman, Job Ross and James Campbell joined, known then as the Ross and Freeman corner, to a pine stake—thence a line to a branch near said stake, and thence to a line down said branch to the said river, and thence down the western bank of the river to the beginning corner—containing sixty-five 23-105 acre

more or less, lying and being in Chambers county, State of Alabama, and being a part of section twenty-eight (28) and twenty-nine (29) township twenty-one (21), range twenty-nine (29), as well as a forty (40) foot right-of-way from the factory building to the public road leading from West Point, Georgia to Berlin, Alabama, at any point where the factory company may locate it, including all the tenements and improvements including the cotton mill and all the machinery therein or thereto belonging and all water privileges and riparian rights now owned and enjoyed by the said party of the first part.

To have and to hold to the said J. J. Robinson, W. C. Yancey and W. T. Huguly, their survivors and successors in trust, that is to say upon trust for securing and providing for the full and complete payment of the aforesaid sum of sixty-five thousand dollars ($65,000) with the interest due and owing by the said Alabama and Georgia Manufacturing Company to the holder or holders of the said bonds or the coupons thereto attached herein before referred to and described, and in order and in the fullest manner to provide for the payment of the bonds aforesaid and the interest thereon at the time and place when and where the same shall respectively fall due and be payable, the said J. J. Robinson, W. C. Yancey and W. T. Huguly, or a majority of them, or their survivors or successors are hereby authorized and empowered, should default be made in the payment of said bonds when they fall due, or in the payment of the interest on said bonds as it shall approve, then immediately on such default being made known by the holder or holders of said bonds or holder or holders of the coupons attached thereto, and if after notice is served upon the president of said company the same shall remain unpaid for six months after such default shall have been made in the payment if the said interest or principal as the case may be, and at the request of any one or more of the holders of said bonds or coupons and without any other or further authority from the said Alabama and Georgia Manufacturing Company upon giving sixty days notice of the time and place of sale together with a description of the property in a newspaper published in Atlanta, LaGrange and West Point, Georgia, *to proceed to sell at public auction at the* office of said com-

pany in the city of West Point, Georgia, *for cash*, the property herein conveyed, or a sufficient amount of the same to pay the amount due and apply the proceeds of sale, first, to the expense of sale, second, to the payment and liquidation of all the bonds and interest due on the same, and the surplus if any, to be paid over to the proper officer of said company, and to execute titles to the purchaser thereof, and in the event the amount realized from the sale of said property shall be sufficient to liquidate the whole of said debt, then the same shall be prorated amongst the holders of said bonds and coupons. And for the further security of the holders of said bonds and coupons, the said Alabama and Georgia Manufacturing Company hereby stipulate and agrees that it will keep this factory building and machinery insured against loss by fire in good and responsible insurance companies to the extent of *sixty thousand dollars*, and on their failure to do so the said trustees are hereby authorized to have the same so insured, the expense of the same to be paid in the same manner as is provided by the same payment said bonds and coupons and the said Alabama and Georgia Manufacturing Company hereby reserve to itself the quiet and peaceable possession of all of said property herein contained, and the right to control, use and manage the same and dispose of the products of said mills in such manner as it may see proper, not inconsistent with the purposes herein expressed until after default as herein provided. Now, if the said Alabama and Georgia Manufacturing Company shall pay off and discharge all said bonds and coupons, then, and in that event, this conveyance to be null and void.

In witness whereof, W. H. Huguly, the president of said company, and W. T. Huguly, the secretary, and W. H. Huguly & Co., the treasurers of said company have hereunto set their hands and affixed the seal of said company at its office in the city of West Point, on the 2d day of January, 1884.

W. T. HUGULY, (L. S.)
President.

W. H. HUGULY & CO., (L. S.)
Vice President and Secretary.

W. H. HUGULY, (L. S.)
Treasurers.

Signed, sealed and delivered in the presence of
W. E. OSLIN,
L. M. HARRIS, *J. P.*

We, the trustees named in the above instrument, hereby accept the trust imposed by the same.

J. J. ROBINSON, (L. S.)
WM. C. YANCEY, (L. S.)
W. T. HUGULY, (L. S.)

Signed, sealed and delivered in presence of
W. E. OSLIN,
L. M. HARRIS, *J. P.*

Filed in office for record January 21st, 1884, and duly recorded January 24th, 1884.

J. J. ROBINSON,
Judge of Probate

Filed in clerk's office 21st day of January, 1891.

O. C. FULLER,
Clerk.

Order to Show Cause.

Read and considered.

It is ordered that defendants show cause before me at the United States Court room at 10 o'clock A. M. on Saturday the 31 of January, 1891, why an injunction should not issue and a receiver be appointed as prayed for in the bill.

Let this bill be filed and service be perfected as is usual in equity.

In open court this January 21, 1891.

WILLIAM T. NEWMAN,
United States Judge.

Agreement of Counsel.

The plaintiff in the foregoing bill hereby agrees that he will not for the present press the application for injunction and receiver without giving at least thirty days notice to N. J. & T. A. Hammond solicitors for defendants. And the defendants reserve the right to call up the said application for receiver, etc., on giving like notice to Dorsey, Brewster

& Howell or Abbott & Smith, solicitors for the plaintiff.
This 31 day of January, 1891.

DORSEY, BREWSTER & HOWELL,
ABBOTT & SMITH,
Solicitors for Plaintiff.

N. J. & T. A. HAMMOND,
Solicitors for Defendants.

Amendment to Bill.

The plaintiff now comes and by leave of the court first had and obtained amends his bill so as strike from Exhibit A to bill the figure 7 wherever it is used to show the date of January, 1884, and insert in lieu thereof the figure 1 so that the same shall read 1 of January instead of 7 of January, 1884, where it occurs.

In open court February 26, 1892.

WILLIAM T. NEWMAN,
United States Judge.

I acknowledge due and legal service of the within bill waiving copy, process and copy process.
This 29th January, 1891.

W. T. HUGULEY,
ALABAMA & GEORGIA MANUFACTURING CO.,
Per N. J. & T. A. Hammond, its Solicitors.
HUGULEY MANUFACTURING CO.,
Per N. J. & T. A. Hammonds, its Solicitors.

Filing —Filed in the clerk's office 4th day of February, 1891.

O. C. FULLER, *lerk.*

Appearance.

ATLANTA, GA., 10 February. 1892.

To the Clerk of the Circuit Court— You will enter our appearance as solicitors for defendants, the Huguley Manufacturing Co., and The Ala. & Ga. Mfg. Co., in the bill of J. J. Robinson, trustee against them and W. T. Huguley.

N. J. & T. A. HAMMOND,
Attorneys at Law.

Filed in clerk's office, 13 day of February, 1891.
O. C. FULLER, *Clerk.*

Demurrer, Bill for Foreclosure, etc.

In the Circuit Court of the United States for the Northern District of Georgia.

J. J. ROBINSON,
vs.
ALABAMA & GEORGIA MANUFACTURING COMPANY ET AL.

The defendant, the Alabama and Georgia Manufacturing Company by its solicitors N. J. & T. A. Hammond and the Huguley Manufacturing Company, by its solicitors, N. J. & T. A. Hammond and John C. Orrick, come and by protestation, not confessing or acknowledging all or any of the matters and things in said complainants bill to be true, in manner and form as therein set forth and alleged do demur and say that said bill is insufficient in law.

And for causes of demurrer they specially set down the following:

1. The alleged trust mortgage which is the basis of said complainants claim of right, gives him no authority to sue alone to enforce the same. He has no title in himself alone, but is only one of the joint trust mortgagees.

2. If in any event complainant could so sue alone, his bill does not sufficiently allege any facts which authorize him to sue without joining W. T. Huguley, his co-trustee, as complainant.

3. The surviving joint trustees, W. T. Huguley and J. J. Robinson, for all that appears in said bill, must necessarily join to assert the trust in said mortgage set forth, and because said W. T. Huguley is a citizen of and a resident of said district in which the defendants against whom this bill is filed are citizens and residents, thus said court has no jurisdiction to foreclose said mortgage as by said bill prayed for.

4. Said complainant, if allowed to sue without joining his said co-trustee, for the purposes of his said bill must necessarily join the bondholders (or at least so many of them as have made the election that the bonds shall be due and the

request that the proceed) as parties complainants in said bill, and make the other parties to his bill, or give a reason why he can not.

5. Said complainant does not aver when default in the payment of interest on said bonds or on any of them was made known to the trustees or either of them, nor that any notice thereof has been served on the president of said Alabama and Georgia Manufacturing Company, both which are conditions precedent to the exercise of authority and and duty by said mortgage conferred on said trustees or a majority of them.

Wherefore these defendants respectfully demand the judgment of this honorable court whether it or either of them shall be compelled to make any further or other answer to said bill or any of the matters or things therein contained and pray to be hence dismissed with its reasonable costs in this behalf sustained.

THE HUGULEY MANUFACTURING CO. and
THE ALABAMA AND GEORGIA MANUFACTURING CO.
By JOHN C. ORRICK and
N. J. & T. A. HAMMOND,
Counsel as above stated.

Mr. John C. Orrick and N. J. & T. A. Hammond, solicitors for and counsel of said defendants as above stated, do certify that in our opinions the foregoing demurrer is well founded in point of law.

JOHN C. ORRICK,
N. J. & T. A. HAMMOND,
Of Counsel for said Defendants.

United States of America, Division Eastern Eastern District of Missouri of C. Ct.

Personally appeared before me, T. L. Crawford, commissioner United States Circuit Court, Eastern Division, Eastern Judicial District of Mo. Demetrius Jannopoulo, president of the Huguley Manufacturing Company, who being duly sworn deposeth and says that the foregoing demurrer is not interposed for delay.

DEMETRIUS JANNOPOULO.

Sworn to and subscribed before me this 7 day of February, 1891.

(SEAL) T. L. CRAWFORD,

Commissioner United States Circuit Court Eastern Division Eastern Judicial District of Mo.

GEORGIA, }
Troup County. }

Personally appears before me a in and for said county in the Northern District of Georgia, W. H. Huguley, who being sworn deposeth and says that the foregoing demurrer by him for the Alabama and Georgia Manufacturing Company is not interposed for delay.

Sworn to and subscribed before me this of February, 1891.

Filed in clerk's office 10 day of February, 1891.

O. C. FULLER, *Clerk.*

We waive having this demurrer sworn not to be for delay by the Ala. & Ga. Manufacturing Company on account of the sickness of its president. This 9th February, 1891.

ABBOTT & SMITH,
Of Plaintiffs Counsel.

Acknowledgement of Service.

Service of the foregoing demurrer acknowledged. Copy waived. February 13, 1891.

ABBOTT & SMITH,
Solicitors for Plaintiff.

Filed in clerk's office 13 day of February, 1891.

O. C. FULLER, *Clerk.*

Order Overruling Demurrer.

In Circuit Court of the Northern District of Georgia. Demurrer etc.

STATE OF GEORGIA.

J. J. ROBINSON, TRUSTEE. ETC., }
versus }
A. & G. M'F'G. CO., ET AL. }

In the above stated case there came on to be heard a demurrer filed by defendants to the bill on certain grounds

in said demurrer set out after argument heard. It is ordered by the court that said demurrer be not sustained but the same is hereby overruled on all the grounds therein taken.

L. Q. C. LAMAR,
Circuit Justice.
WM. T. NEWMAN,
District Judge.

May 30th, 1891.

ABBOTT & SMITH,
DORSEY, BREWSTER & HOWELL,
Attorneys for Complainants.

Filed in clerk's office May 30, 1891.
O. C. FULLER, *Clerk.*

Opinion of Court on Demurrer.

In the United States Court for the Northern District of Georgia.

J. J. ROBINSON, TRUSTEE,
vs.
THE ALABAMA & GEORGIA MANUFACTURING COMPANY

Before Lamar, Justice, and Newman, J.

By the court.

There are five grounds of demurrer and for convenience we consider them in inverse order. The first ground thus considered, is that "said complainant does not aver when default in the payment of interest on said bonds, or any of them, was made known to the trustees, or either of them, nor that any notice thereof has been served on the president of the said Alabama and Georgia Manufacturing Company, both of which are conditions precedent to the exercise of authority and duty, by said mortgage conferred, on said trustees or a majority of them.

The language of the trust deed so far as applicable to this ground of demurrer, is as follows: "In order, and in the fullest manner to provide for the payment of bonds, aforesaid, and the interest thereon at the time and place when and where the same shall respectively fall due and be payable, the said J. G. Robinson, W. C. Yancey & W. T. Huguley, or a majority of their survivors or successors, are hereby au-

thorized and empowered, should default be made in the payment of the said bonds when they fall due, or in the payment of the interest on said bonds as it shall accrue, they immediately on such default being made known by the holder or holders of said bonds, and the holder or holders of the coupons attached thereto, and if after notice is served upon the president of said company, the same shall remain unpaid for six months after such default shall have been made in the payment of said interest or principal, as the case may be, and at the request of any one or more of the holders of said bonds or coupons and without any other or further authority from the said Alabama and Georgia Manufacturing Company upon giving sixty days notice of the time and place of the sale together with a description of the property in a newspaper published in Atlanta LaGrange & West Point, Georgia, to proceed to sell at public auction, etc."; then providing for the manner of sale and and the applications of the proceeds. After alleging default in the payment of the coupons due July, 1890, and January, 1891, and that more than six months had elapsed since the July coupons fell due, and that they still remain unpaid and that no money was deposited at the place of payment at the time the said July coupons fell due, and none deposited within six months thereafter, and that all or nearly of said July coupons remained unpaid, as orator is informed by the holders thereof, the bill proceeds, "Orator has been notified since the expiration of the six months after the said July coupons fell due, by a majority of said bondholders in amount of their election to treat the whole of said principal sum named in the bonds as due under the provisions of said bonds; the orator has been requested to begin proceedings to secure the property pledged for the payment of said indebtedness and he deems it to the best interest of the holders of said bonds that he should do so."

It will be seen that even if this provision applies in a case where foreclosure proceedings in the court are instituted, as well as of the trustees proceedings to advertise and sell as authorized by the trust deed, the allegation lacking is that notice was served upon the president of the company. If the trustee was proceeding to sell the property himself under

the authority of the trust deed, a strict compliance with this provision might be demanded, but, in as much as he is proceeding in the court, asking for a decree of foreclosure, we are of the opinion that the allegation of notice to the president is unnecessary. It is alleged that the Alabama and Georgia Manufacturing Company has ceased to do business and keep an office in West Point, Georgia, or elsewhere, for the transaction of business, and that the property covered by the trustees has been sold under the decree of the State court and bought by parties who, having organized the Huguley Manufacturing Company, are now in possession of the same. It might be argued, if it were necessary so to do, that this condition of affairs would dispense with the allegation of notice to the president, even if it were otherwise necessary, but in view of the opinion expressed above further discussion of it is unnecessary.

The other grounds of demurrer may, we think, be considered together, and they are, substantially, that J. J. Robinson, who alone brings this bill, is unauthorized to sue alone. The allegation of the bill is that Yancey, one of the trustees, is dead, and this, it is conceded, disposes of the matter so far as he is concerned. The further allegation is that said W. T. Huguley, defendant herein, and named as one of the trustees for said bondholders, claimed at the time of said sale to be interested in the purchase of said property, and now claims also to be interested in the property and assets of "said Huguley Manufacturing Company. He is interested adversely to your orator as trustee of said bondholders." The sale referred to is the sale under the decree of the State court before mentioned. While it appears, it is true, from the bill, that the property was sold under the decree of the State court subject to this trust deed, it nevertheless, we think, appears from the foregoing allegations that Huguley's interest is adverse to that of the bondholders, and consequently, to show his incapacity as a party complainant. It might certainly have been alleged with more definiteness, but conceding the statements to be true, as the demurrer does, we think his adverse interest sufficiently appears. It may be mentioned that the trust deed is signed by W. T. Huguley as vice president and secretary of the Alabama and

Georgia Manufacturing Company, so that it would seem that his interest has been adverse to that of the trust created by the deed from the beginning.

Filed in clerk's office, 6th day of July, 1891.

O. C. FULLER, *Clerk.*

Bill to Foreclose Mortgage.

United States Circuit Court, Northern District of Georgia.

J. J. ROBINSON, TRUSTEE,
versus
ALABAMA AND GEORGIA MANUFACTURING COMPANY, ET AL.

Answer of the Huguley Manufacturing Company and the Alabama and Georgia Manufacturing Company.

These defendants now and at all times hereafter saving and reserving unto themselves all benefit and advantage of exception which can be had or taken to the many errors, uncertainties and other imperfections in the said complainants said bill of complaint contained, for answer thereunto or unto so much and such parts thereof as these defendants are advised, is or are material or necessary for them to make answer unto, these defendants answering say:

1. The citizenship and residences of all the parties named in said bill are admitted as alleged.

2. These defendants are informed and believe that said Alabama and Georgia Manufacturing Company (hereinafter called, for brevity, the old company), did make some sort of mortgage to said J. J. Robinson, W. T. Huguley and W. C. Yancey, but defendant's believe that it is not the same as stated in Exhibit A, to said bill, and insist on proof of said mortgage.

3. These defendants admit that said old company did issue bonds. Of the exact form or contents of each of the defendants are ignorant. Who holds the same these defendants do not know, except that they have been informed of the following holders of said bonds as follows:

P. Romare, for Atlanta National Bank,.....	4	bonds
M. & L. Lanier.....	84	"
N. D. Denson, as representative of M. T. Walker, deceased	20	"
A. T. Dallas.....	4	"
Judge B. F. Ferrill.....		"
Mrs. Yancey		"
Susie Huguley, Mrs. Lanier and Mrs. Yancey, represented by L. Lanier.....		"
W. H. Huguley		"
J. H. Nolan		"
Mrs. Sallie Huguley		"

All of which bondholders reside in Georgia in said district, except said Denson.

4. Whether said old company is insolvent these defendants do now know. That it has ceased to do business as a manufacturing company these defendants admit. From 1882 to July, 1888, W. H. Huguley & Co., of West Point, Georgia, was the treasure of said old company. Said treasure firm was composed of W. H. Huguley, W. T. Huguley and J. H.Nolan, all of said West Point, Georgia. The firm carried on there a mercantile business and part of the time a banking business, also; said banking business began in 188 . During all the said six years either said W. H. Huguley or said W. T. Huguley was president of said old company; when one was president the other was vice president. In July, 1888, said W. H. Huguley, W. T. Huguley, J. H. Nolan, J. J. Robinson, A. T. Dallas, L. Lanier, W. S. Jackson, L. D. Hutchinson and J. M. Harrington were made directors and said W. H. Huguley was elected its president. Its business office continued at the said place of business of said W. H. Huguley & Co. in West Point, Ga., where said firm there and ever since up to this moment has continued to do business.

In that state of facts a bill was filed in the Superior Court of Troup county, Georgia, against said W. H. Huguley & Co., by said A. T. Dallas and certain other stockholders of said old company, praying for an accounting between said firm and said old company and for a receiver. H. O. Fisher was appointed receiver and took charge of the mortgaged

property aforesaid. Said firm answered, setting up by cross bill its claim against said old company; and other creditors became parties and set up their claim against said old company. The whole matter was referred to a special master; he reported, and there was on the 15th day of November, 1889, a decree thereon, the perinent parties of which were as follows:

That said W. H. Huguley & Co. should recover of said old company $21,095.00 principal. Interest to Nov. 4, 1889, $2095.55, and future interest at 8 per cent per annum until paid, all secured by a mortgage dated August 2, 1888, on said property in the mortgage described in the exhibit to said bill, to be levied by mortgage *fi. fa.* on mortgaged property, and said firm recovered of said old company other principal debt of $2455.95, due Nov. 4, 1889, including $324.76, as their attorneys fees, plus further interest on said last principal until paid, and costs, and it was decided that a common law *fi. fa.* issue for both, to-wit, $23,500.00 principal, $2095.55 interest, until Nov. 4th, 1889, and costs.

By said decree the Atlanta National Bank recovered of said old company $30,000.00 principal plus protest fees $6.00, plus fees of their attorney N. J. Hammond $546.44, and also as interest to that date $2371.93 all secured by said mortgage of 2 August, 1888, with a foreclosure therefor of said mortgage on said property and that both a mortgage *fi. fa.* and a common law *fi. fa.* issue therefor, upon application.

It was further therein decreed that S. M. Inman & Co., recover of said old company $10,000.00 principal $2012.50 interest to date and costs, and that the Lowell Card Company recover of said old company $617.50 principal.

It was therein further decreed that certain other costs and expenses to be paid to officers of court, stenographer, master, counsel for complainants, and Receiver Fisher and a temporary receiver W. W. Harrington, all amounting to $, or some such large sum all which sums in this paragraph mentioned were mentioned in the 8th subdivision of said decree.

Further in said subdivision it was decreed to be paid as follows:

"F. Whatever part of the interest on the coupons of the first mortgage bonds of the Alabama and Georgia Manufact-

uring Company paid or to be paid by said Fisher under the order of this court of the disposing of the assets in his hands as shall appear by the orders of the chancellor in this regard.

G. These last mentioned items to be taxed by the clerk upon such orders of the chancellor and the clerk shall also tax all other costs not herein before specially provided for."

Said decree further provides as follows:

"10. The dignity of the respective liens herein set forth are as follows:

First—Said remainder of over due interest on the first mortgage bonds of said the Alabama and Georgia Manufacturing Company if any shall be reported by the chancellor.

Second—The other items of costs and expenses mentioned in item eight (8) of this decree.

Third—The mortgage debts due to said W. H. Huguley & Company and said Atlanta National Bank, these two being of equal dignity.

And Fourth—The unsecured debts of W. H. Huguley & Co., S. M. Inman & Co., The Lovell Card Company."

And it further provided "13. It is further ordered and decreed that all the property of the Alabama and Georgia Manufacturing Company, herein described be sold as an entirety by said Receiver Fisher, after advertisement as sheriff's sales are advertised and said sale to be conducted within the legal hours of sheriff's sales of the first Tuesday in January (1890) next to the highest bidder for cash except that any judgment against said Alabama and Georgia Manufacturing Company specified herein may be rated as cash according to its said dignity except sufficient to pay plaintiff's attorney's fees thereon and said receiver may and shall distribute the proceeds of such sale after said attorneys fees are paid according to the said dignity of said claims as between the respective owners thereof. No claim shall be treated as cash until those of higher dignity are paid. Said receiver shall and will report his action in the premises to the undersigned chancellor. Said sale shall be made in Harris county, Georgia, where said property in Georgia is situated, this November 15, 1889. S. W. HARRIS,

J. S. C. C. C."

This was the decree under which said mortgaged property was sold, not by the sheriff, but by said receiver, Fisher, and was purchased as alleged by certain persons who afterwards did convey title thereto to said Huguley Manufacturing Company, which, for brevity, will hereinafter be called the new company. The bidders at said sale bid for said property the sum of $69,000.00. The next highest bid to their own was $68,500.00, which was by persons in no way connected with those who did purchase, and who had none of the claims which were to be treated as cash at said sale. That shows the value of said property at that time. *All said bidding was for the property, subject to said first mortgage.*

Neither at the time of said sale nor since did said W. T. Huguley have any interest in said property so bought, except as a member of said firm of W. H. Huguley & Co.

This defendant does not know or have any information of any other claim of interest by said W. T. Huguley in said property.

This defendant says that it has no information about insurance on said property according to and under said first mortgage except as follows: Insurance was kept thereon before said litigation above $65,000.00, but so far as this defendant is advised, never before said sale was there any insurance in the name of or on its face for the benefit of the said trustees. If the insurance ever fell below the sum above named they are advised it was only during the said litigation, when, because the mills were empty and idle, some insurance companies would not insure as before. Since said sale said property has been insured by said purchasers and the Huguley Manufacturing Company for the benefit of said trustees, and is now so insured as follows:

London Fire Ins. Co., England.	Expiring	February	5, 91.	$10,000	Renewed
Macon Fire Ins. Co., Ga.	"	"	5, 91.	2,500	"
Liverpool, London & Globe, England	"	"	17, 91.	25,000	"
Scottish Union & National,	"	"	17, 91.	5,000	"
" " " "	"	"	March 19, 91.	5,000	"
Commonwealth Union	"	"	" 27, 91.	12,500	"
London Assurance Corp.	"	"	June 25, 91.	5,000	"
				$65,000	

All of the above in favor of Trustees for 1st Mortgage Bondholders.

Hartford Ins. Co., Conn.	July 7,	$10,000
Royal Ins. Co., England	" 8,	10,000
Phœnix Assurance, England	" 22,	10,000
		$30,000

Loss, if any, payable to Huguley M'f'g Co.

Commercial Union, England	July 8,	$25,000
Orient	" 8,	15,000
Rome	" 8,	7,500
St. Paul Fire and Marine, St. Paul, Minn.	" 10,	2,500
		$50,000

Loss, if any, payable to St. Louis Trust Co.

London & Lancshire, England	July 12,	$15,000
American Fire Ins. Co. New York	" 12,	15,000
Sun Fire Office	" 12,	10,000
New York Fire Ins. Co.	" 12,	2,500
Guardian	" 12,	2,500
Union Assurance, England	Aug. 23,	5,000
Commonwealth, N. Y.	" 23,	5,000
		$55,000

Loss, if any, payable to Huguley M'f'g Co.

This was intended to be and these defendants claim was a compliance with the obligation with said old company in that regard in said first mortgage. At any rate, it was known and approved by W. T. Huguley, one of the said trustees, residing in Georgia. Said Robinson, trustee, residing in Alabama, and so far as these defendants knew, in no way concerned himself about the same. Certainly there was no complaint by him to these defendants until the vague one in the bill set forth.

These defendants state that the facts about payments and non-payments of the interest on said bonds are as follows: The same was promptly paid at maturity by said old company at the said store of W. H. Huguley & Co., until the mortgaged property was put in the hands of a receiver as aforesaid.

While said property was held by said Fisher, receiver, he had for his banker, the Atlanta National Bank, at Atlanta, Georgia, and paid the interest at said bank, or it had it done by its correspondents M. & L. Lanier, of West Point, Ga. All the coupons presented at one or the other of said banks were so paid.

L. Lanier was not a party on the record in said litigation with the old company, but was a witness for complainants

therein and a most active worker for them. Before said decree was taken complainants' counsel had to and did consult said L. Lanier to see if he would consent thereto and he did so consent. The sale occurred after that, and after the sale said M. & L. Lanier for said Atlanta National Bank and said Atlanta National Bank paid off the coupons due in July, 1891, plus the interest due thereon for the time it had been in default. So the coupons due in January, 1890, were paid off with interest thereon in July, 1890. It was paid under notice like the one below mentioned *mutatis mutandis.*

Intending in good faith so to pay the coupons due in 1890 and interest thereon, promptly, to each and every holder thereof on the 29th of December, 1890, D. Jannopoulo, the president of the Huguley Manufacturing Company, wrote to the Constitution Publishing Company at Atlanta, Georgia, to publish the following notice: "Notice.—All coupons due July 1, 1890, to the first mortgage bonds of the Alabama and Georgia Manufacturing Company, will be paid on presentation at the Atlanta National Bank, Atlanta, Georgia, by said bank.

HUGULEY MANUFACTURING COMPANY,
D. Jannopoulo, President."

The letter of said D. Jannopoulo, president, sending said notice requested that it be inserted in the daily of 31st of December, January 1 and 2. It was so published except that the first insertion was on January 2, 1891.

On the said 29th day of December, 1890, said Jannopoulo, president, also wrote said Atlanta National Bank to pay said July coupons, and enclosed in the letter the money, $2678, to be used by said Atlanta National Bank in payment of said coupons due July 1, 1890, and interest thereon. The regular time for the transmission of letters from St. Louis, Missouri, the home of said Jannopoulo, where said letters were written and mailed, was such that they should have reached Atlanta by 6.40 o'clock P. M., December 30, 1890. In Atlanta at that time there were three deliveries per day, to-wit: at the Atlanta National Bank perhaps sent for its mail. The banking hours of said Atlanta National Bank were from 9 A. M. to 2 P. M. daily except Sundays.

On the 2d of January, 1891, at the instance of said trustee, W. T. Huguley, N. J. Hammond, during the morning banking hours, went to T. Romare, vice president of said Atlanta National Bank, and told him that said W. T. Huguley wished to know whether Mr. Jannopoulo had provided for paying said July interest coupons and interest thereon. Said Romare said that he had not. In answer to a question whether he would pay same on a telegraphic request of said Jannopoulo, said Romare answered he would. When this was reported to said Huguley by said Hammond, said W. T. Huguley telegraphed said Jannopoulo, and in the afternoon answer came to care of said Hammond, who read same. It told of said provision published in the said *Constitution* for said payments. Said Hammond went at once to said Atlanta National Bank, after banking hours, and failing to find the said Romare, told Mr. Currier, the cashier of said Atlanta National Bank, of said dispatch, who said he had instructions to pay and would do so as advertised, and upon said Hammond's suggestion, promised to telegraph to said M. & L. Lanier to pay said July, 1890, coupons and interest thereon. And said Currier promised to telegraph and defendants believe he then did so telegraph. Said M.& L. Lanier were the regular correspondents of said Atlanta National Bank and made no objections to such sub-agency but accepted the same. Up to the receipt of that dispatch of said M. & L. Lanier none of the July, 1890, coupons had been presented either in December, 1890, or in January, 1891, nor had any demand of payment on them then made any where during those months of December nor January after said dispatch was sent to them.

One of the said M. & L. Lanier pretended to bondholders that his house had a dispatch from the Atlanta National Bank to pay the coupons due 1st of January, 1891, but no authority or means to pay those due July 1, 1890.

Several times said Hammond was in the Atlanta National Bank and talked with said Romare who told him that said Laniers had paid some coupons due January 1, 1891, but that none due July 1, 1890, had been presented to them for payment. If they had paid any due January 1, 1891, it was

without such instructions from the Hugnley Manufacturing Company or of any one else so far as these defendants are aware.

The Atlanta National Bank paid on coupons due January 1, 1890, and interest on same as follows: July 8, 1890, $300.00—July 11—$1414.40, and $756.00 July 23, $700.00 September 22, $315.60 and September 26—120.00. It paid on coupons due July 1, 1890, and interest due thereon as follows: Jan. 5, 1891, $4.20; Jan. 8, 1891, $289.80; Jan. 14, 1891, $164.00, and Jan. 23, 1891, $160.00.

These defendants have no later report.

The Atlanta National Bank has never notified either of these defendants of its unwillingness to act as agent to pay off said interest nor of any unwillingness to accept same on the bonds held by it nor given any notice to either of them of any such unwillingness by said Laniers to act as their sub-agents in this matter, nor did Laniers give such notice.

After this bill was filed, said Jannopoulo, president, came to Georgia he found that the bill was filed by Abbott & Smith, the regular attorneys of the Atlanta National Bank, joined by other counsel and that said Abbott had declined to state what bondholders desired the suit begun. Said Jannopoulo then went to West Point, Ga., and found that by showing the telegram purporting to authorize him to pay the January, 1891, interest, but not that of July, 1890, and by representing that the property was not insured as required as by said first mortgage, L. Lanier deceived some and they joined with others, asked said Robinson to file this bill.

Among those who made the request was the Atlanta National Bank and on the faith of that request they were joined by said Denson representing W. T. Walker's estate holding 20 bonds. This was learned from Robinson and said Denson. After said Jannopoulo learned that, he came to Atlanta and without disposing what had been learned at LaFayett, Alabama (though others may have disclosed same) called on the said Atlanta National Bank for a statement of what it had paid and obtained the one copied above. That was on the 29th of January, 1891,—since then Mr. Elliott has received the July 1, 1890, interest on his 11 bonds, $226.60.

These defendants say that the officers of said old company remain as hereinbefore stated and that many of said bonds are owned or held by one or more of them, that the law of the old company's charter, allowed it to change its place of business to either LaGrange, Columbus or West Point, Ga. West Point, Ga. was its place of business when the bonds were issued and they and the interest on them were made payable at the old company's office. No action of the old company has changed its office from said W. H. Huguley & Co.'s said place of business. If in law that be held to be its place of business, these defendants say that though no money was there deposited to pay the same, the other trustee's place of business was there, and had a demand been made there the person making the same would have been told where to get his money, or been paid there. No demand was made there. But these defendants aver that after the old company ceased manufacturing by reason of all the facts aforesaid, there was an offer to change the place of paying the coupons to the Atlanta National Bank, and that offer was accepted by the bondholders, who took the money from that bank, or M. & L. Lanier as its sub-agent when the January, 1890, coupons were paid. Defendants claim that that made Atlanta, Ga., that place of future payments, at least until notice to the company was given by some holder. No such notice was given.

These defendants aver that there was a *bona fide* intention that there should be no default as to said coupons so as to make said bonds due, and that said Jannopoulo sent the money to the Atlanta National Bank on 29th December, 1890, after taking the advice of his attorney, Mr. Orrick, that that was right. It was sent in time and was received in time at said bank, it is claimed by said Atlanta National Bank, that it was not opened and put on its books until the 2d of January, 1891, because the 1st of January, 1891, was a legal holiday in Georgia. If a holiday as claimed would excuse said bank from receiving said money and entering its trust as claimed, it would also excuse payment on that day. These defendants do not concede that the said Atlanta National Bank is so excused.

These defendants insist that so far as the forfeiture is

concerned no wrong was done said bondholders in taking time after the maturity of a coupon for paying same. Said Jannopoulo had advanced large sums of money in and about the purchase of said property, aggregating say $55,000.00 and had spent say $5,000 in putting up new houses and other improvements in same, and has contracted and is now spending an additional $5,000.00 in machinery and betterments; said W. H. Huguley & Co., had put therein certain finding, etc., worth $1,500.00 and the whole property had been greatly improved and was in full operation when said bill was filed, and is now in full operation. Said Laniers are interested in a rival cotton mill on the same river about 2½ miles above this mill and these defendants think said Laniers are much more interested in crippling the Huguley Manufacturing Company than in collecting said coupons or bonds. These defendants say that they are continually ready and offered and do still offer to pay them at said Atlanta National Bank and if any bondholder objects to the place will pay him elsewhere at his option.

They insist that to hold said debts wholly due under the foregoing circumstances and would be contrary to said contract, and would be a fraud upon the right of the Huguley Manufacturing Company and the Alabama and Georgia Manufacturing Co. These defendants accept the waiver made by complainant as to verifying this answer, and therefore do not swear to the same, but will prove it all to be true.

They pray to be discharged hence with their reasonable costs most unjustly incurred by bringing this bill under the facts aforesaid.

N. J. & T. A. HAMMOND,

Solicitors for the Huguley Manufacturing Company and the Alabama and Georgia Manufacturing Company.

JOHN C. ORRICK,

Solicitor for Huguley Manufacturing Company.

Filed in clerk's office 9 day of June, 1891.

O. C. FULLER, *Clerk.*

Amending its answer the Huguley Manufacturing Company says that it is the owner of all the said mortgaged property subject to said mortgage of $65,000.00 and interest

having bought the same from the purchasers at said receiver's sale. They pray if said $65,000.00 mortgage be by decree foreclosed in this case that the decree shall protect the Huguley Manufacturing Company by decreeing that any surplus after paying the mortgage for $65,000.00 and interest and costs shall belong to the Huguley Manufacturing Company and for such other relief as may be equitable.

This 13 Nov. 1891.

N. J. & T. A. HAMMOND,
Atty's for the Huguley Mfg. Co.

Let the above amendment be considered as of file on this 13th Nov. 1891, as part of said answer.

DORSEY, BREWSTER & HOWELL,
ABBOTT & SMITH,
N. D. DENSON,
Sols. for Plff.

Filed in clerk's office 13 day of November, 1891.

O. C. FULLER, *Clerk.*

Replication.

Bill for Foreclosure, etc. In the Circuit Court of the United States, Northern District of Georgia.

J. J. ROBINSON, TRUSTEE, ETC.,
vs.
ALABAMA & GEORGIA MFG. CO., ET AL.

The replication of J. J. Robinson, trustee, etc., the plaintiff in the above stated cause, to the answer of the Huguley Manufacturing Company and the Alabama and Georgia Manufacturing Company.

This repliant saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer for replication thereunto saith that he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law, to be replied unto, confessed and

avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready to aver and prove as this Honorable Court shall decide; and hereby prays as in and by his said bill he hath already prayed.

J. J. ROBINSON, *Trustee.*

DORSEY, BREWSTER & HOWELL,
N. D. DENSON,
ABBOTT & SMITH,
Solicitors for Plaintiff.

Filing —Filed in clerk's office, 24 day of June, 1891.

O. C. FULLER, *Clerk.*

Decree Pro Confesso as to W. T. Huguley.

J. J. ROBINSON, TRUSTEE,
vs.
W. T. HUGULEY, ET L.

The defendant in the above stated case having failed to file his demurrer, plea or answer in the clerk's office at October Rules as under the order granted by the court

It is therefore ordered that the bill be taken *pro con fesso* and that the case be proceeded in *ex parte* and the matter of the bill may be decreed by the court at any time thirty days after the entry of this order if it should appear that the same may be proper to be decreed, as to said W. T. Huguley:

This Oct. 5, 1891.

O. C. FULLER, *Clerk.*

ABBOTT & SMITH,
Solicitors Complainant.

DORSEY, BREWSTER & HOWELL,
Solicitors Complainant.

Petition to Make St. Louis Trust Company a Party.

In the Circuit Court of the United States for the Northern District of Georgia.

J. J. ROBINSON, TRUSTEE, *Complainant.*
versus
THE ALABAMA AND GEORGIA MANUFACTURING COMPANY, THE HUGULEY MANUFACTURING COMPANY; W. T. HUGULEY, *Defendants.*

Now at this day comes the St. Louis Trust Company, a corporation duly organized under the laws of the State of

Missouri and authorized to act as trustee as hereinafter mentioned and prays that it be made a party defendant herein and states that on the 1st day of July, A. D. 1890, the defendant the Huguley Manufacturing Company by mesne conveyances from H. C. Fisher, receiver of the said Alabama and Georgia Manufacturing Company, defendant, became the owner of all the property covered by the said mortgage executed by the said Alabama and Georgia Manufacturing Company to complainant and fully described in his said bill; that on the 17th day of July, A. D. 1890, the said Huguley Manufacturing Company, defendant, did by its mortgage of said date hereto the court shown convey to and duly mortgage to your petitioner, the St. Louis Trust Company, said property to secure to it the payment of certain one hundred bonds each of the par value of $500, dated the 1st day of July, A. D. 1890, and running until the 1st day of January, A. D. 1904 and containing similar terms and provisions as to payment as provided in said bonds of said Alabama and Georgia Manufacturing Company, exhibited in said bill that said mortgage to said petitioner of said Huguley Manufacturing Company provides that said mortgage is subject to said mortgage of said Alabama and Georgia Manufacturing Company; that said one hundred bonds were duly issued prior to the filing of the bill herein and are now outstanding and unpaid; that this petitioner as trustee in said mortgage of said Huguley Manufacturing Company is interested in protecting the said property for the holders of the said bonds issued by the said Huguley Manufacturing Company; that it does not desire a foreclosure of either of said mortgages and so far as advised maintains that no good and sufficient cause for the foreclosure sought by said bill of complaint exists but your petitioner prays that in the event this court should order such foreclosure that in the decree thereof it should be provided that at any sale of the said property thereunder, the said bonds of the said Huguley Manufacturing Company or any part thereof issued under the said mortgage to this petitioner as trustee shall be accepted at par and interest as payment on account of purchase money as to any excess over the amount of said bonds of said Alabama & Georgia Manufacturing Company, interest and costs and for such

other and further relief as to the court may seem meet and proper.

THE ST. LOUIS TRUST COMPANY,
By its Attorney, John C. Orrick.

In the Circuit Court of the United States for the Northern District of Georgia.

J. J. ROBINSON, TRUSTEE, *Complainant,*

versus

THE ALABAMA & GEORGIA MANUFACTURING COMPANY, THE HUGULEY MANUFACTURING COMPANY, W. T. HUGULEY, *Defendants.*

Thomas H. West, president of the petitioner herein, the St. Louis Trust Company, trustee in the said mortgage executed by the Huguley Manufacturing Company, defendant, to secure the payment of one hundred bonds each of the par value of $500 by it issued, of date July 17th A. D. 1890, makes oath and says that all of the aforesaid bonds to-wit: in number one hundred, are now outstanding and unpaid.

THOS. H. WEST.

Subscribed and sworn to before me this twenty-third day of November, A. D., 1891.

My term expires March 11, 1894.

(SEAL) F. P. JONES, *Notary Public.*

Ordered that the foregoing petition be filed, that said St. Louis Trust Company be a party defendant, and that the other parties have notice hereof served on them.

This 28th November, 1891.

WM. T. NEWMAN,
United States Judge.

Filing:—Filed in Clerk's office, November 28, 1891.
W. C. CARTER, *Deputy Clerk.*

Service of the foregoing petition and order acknowledged, and copy waived this 28th November, 1891.

J. J. ROBINSON, *Trustee,*
By ABBOTT & SMITH, *Solicitors.*

THE ALA. & GA. MANUFACTURING CO.
And other defendants as per record represented.
By N. J. & T. A. HAMMOND,
JOHN C. ORRICK.

Testimony of N. J. Hammond.

In the United States Circuit Court for the Northern District of Georgia.

J. J. ROBINSON, TRUSTEE,
versus
THE ALABAMA & GEORGIA MANUFACTURING COMPANY ET AL.

Bill to Foreclose Mortgage.

We consent that the testimony of Mr. N. J. Hammond, of Atlanta, Georgia, may be taken without a commission by Mr. E. R. Austin as sole commissioner, and sworn to before any notary public, and so used as evidence, subject to legal objections as to relevancy, 20 Jany, '92.

N. J. & T. A. HAMMOND,
Attys. for Defts as pr record.

ABBOTT & SMITH,
Sols. for Plff.

Mr. N. J. Hammond being interrogated answers as follows:

Direct Examination.

Q. What connections have you had with the matters mentioned in this bill?

A. I was attorney for the Alabama & Georgia Manufacturing Company and others in the foreclosure of the mortgage, which resulted in the sale of the Alabama & Georgia Manufacturing Company's property by Fisher, receiver, to Graham, Orrick and Chilton. I advised in the procurement of the charter of the Huguley Manufacturing Company, and have been its attorney in this and other matters in Georgia since. When the bill in this case was filed, D. Jannopoulo, president of the Huguley Manufacturing Company, instructed my firm to defend it for that company and W. H. Huguley, as president of the Alabama & Georgia Mfg Co., retained us to defend that company, by a writing now in our possession, and which will be exhibited in court, and which is not hereto attached because it is our authorization, and should be kept among our private papers. Its date is the 23d of January, 1891. By virtue of that authority, we acknowledged service for the Alabama and Geor-

gia Mfg Co. and filed its answer.

Q. What do you know about the payment of any coupons of the bonds mentioned in said bill?

A. I once held one of said bonds pending the litigation in Troup Superior Court, and perhaps for some time after. I collected one or two coupons thereon from the Atlanta National Bank. Probably one of them or the interest on it was paid to me by Fisher, receiver, at his bank at Newnan, Ga. About this I am not positive. The bond I held belonged to one of my clients Mr. Nolan. Pending this litigation in United States Court, Mr. Fisher, receiver, delivered to me coupons numbered from 1 to 130 inclusive, due Jan. 1st, 1889, and with them a receipt of Denson as attorney at law and in fact for Walker's estate for those numbered from 1 to 20, which receipt was dated Dec. 31st, 1889, and will be produced in court, and also with the packet was a postcript written by Mr. Fisher, signed by his initials only, giving directions about these coupons. I have had correspondence with Fisher and with Denson, and believe I know their handwriting, and think the receipt of Denson is in his handwriting, and the posteript in Fishers, though I do not profess to be familiar with either handwriting. At the same time Mr. Fisher delivered to me coupons numbered 1 to 130, due July 1st, 1889. These two batches of coupons are those exhibited to Mr. Currier, cashier of the Atlanta National Bank, when he testified in this case about the stamp with which they are canceled. I have also coupons due Jan. 1st, 1891, numbered 67 to 74 inclusive, and 111 to 124 inclusive, and those due July 1st, 1891 numbered 67 to 88 inclusive and 111 to 124 inclusive, which came to me from John T. Higginbotham, whom I had instructed to pay the same. All these coupons and the posteript and receipt will be exhibited on the trial. Mr. Fisher asked that his be returned to him as his vouchers, and for that reason the receipt and posteript are not attached to this testimony. The coupons themselves need not be attached, so far as witness is advised. On the 20th of June, 1891, I was furnished with funds by D. Jannopoulo for the payment of coupons of said Alabama and

Georgia Manufacturing Co., and undertook to do so, pursuant to the advertisement in the *Constitution* already mentioned in the agreed testimony. I furnished Mr. Higginbotham with money to pay those which he paid. I believe none were presented for payment at my office or to me. He was also in the same way authorized to pay as by the later advertisements appear already in the evidence, and his two batches represent, so far as I am advised, all that he has paid. From the 20th of June, 1891, I as agent for D. Jannopoulo, president of the Huguley Manufacturing Co., have been prepared to pay on demand all the coupons and the interest thereon which were mentioned in the advertisement by us, and in our letters to J. J. Robinson, already in evidence; and I was about to advertise a like readiness to pay the interest due January 1st, 1892, but plaintiff's counsel, Mr. Abbott, agreed with me that I need not incur that expense, saying his clients would refuse to accept the same. I called on Mr. Currier, and told him I wished to pay the coupons and interest on the bonds held by the Atlanta National Bank, remarking that I had been told by Jannopoulo that they had accepted their interest. Mr. Currier said, "Yes," and was getting out the bonds to cut off the coupons, when Mr. Abbott casually came into the bank, and I remarked to him that I was about to pay that interest. He told Mr. Currier not to accept it. I replied that they did accept the interest before from Jannopoulo, and Mr. Abbott said: "Well, I suppose that was a mistake, and Mr. Currier had better not accept it." Then Mr. Currier declined to accept it.

Q. When and why did you first make inquiry at said bank about the interest due July 1st, 1890?

A. On the morning of the 2d of January, 1891, Mr. W. T. Huguley, one of the trustees for the bondholders, came into my office, and asked if Jannopoulo had made arrangements to pay the interest at the Atlanta National Bank as he had done before, and because I did not know, he asked me to inquire at the bank. I went to the bank during the banking hours—at what time in the morning I do not recall,—saw Mr. Romare in his room, and told him that Mr. Huguley had sent me to make said inquiry. He said that no arrangements had been made for the payment there of the coupons due in July, 1890. I asked him if his

bank would pay upon a telegraphic request from Jannopoulo. He replied it would. I returned to my office, and informed W. T. Huguley of the above conversation between me and Mr. Romare, and he wrote a dispatch to be sent to Jannopoulo, the contents of which I do not know, and Mr. Huguley left my office saying he would return home to West Point in the afternoon, and asking that I telegraph him about the matter. In the afternoon, after banking hours, a dispatch from Jannopoulo to Huguley, addressed to the care of myself or my firm, came and I read it. As I recall its substance, it was that he had already furnished the funds to the Atlanta National Bank to pay the said interest. With that dispatch I went to the Atlanta National Bank, and entered in the rear because the front door was closed, because after bank hours, and Mr. Romare being absent, I saw Mr. Currier, and either showed him the dispatch or told him the substance. He replied to me that that was correct and that it had been published in the *Atlanta Constitution* that they would pay said coupons when presented. I had told Mr. Romare in the morning and I repeated to Mr. Currier in the evening, that that was perhaps the last day for demand of payment of the coupons, and stated to Mr. Currier that some persons might claim that the coupons ought to be paid at West Point, and to guard against that I wished he would telegraph at once to his correspondence there to pay all of those coupons when presented. He promised to do so. Whether the date of them was mentioned I do not recall, but I know what coupons we were talking about, and that he told me of the advertisement in the Constitution. I then went to the telegraph office, and telegraphed Huguley at West Point, and, by mail, I enclosed Jannopoulo's telegram to him there. A few days after that in the bank, I asked Mr. Romare whether any of those July coupons had been presented at the Laniers at West Point for payment, and he said the Laniers had reported the payment of some due January, 1891, but none of those due July, 1890. I replied to him that no one had authorized the Laniers to pay coupons due January, 1891, to which he made no reply. I never heard of any mistake in the telegram by Currier until he testified in this case. It will be proper to state that W. T. Huguley desired the arrange-

ment made for paying the coupons at the Atlanta National Bank, and my request for it to authorize payment at West Point was my own suggestion from abundant caution. I knew, however, that the office of the Laniers was not the office of the Alabama and Georgia Manufacturing Company, and that place was designated by the Atlanta National Bank in West Point because the Laniers were the correspondents of the Atlanta National Bank.

Q. State anything else you know to benefit the defendants.

A. I do not recall anything else at present, except that when the bill was filed and we had been employed to defend it, I asked Mr. Abbott, complainant's solicitor, to tell me at whose instance the bill was filed, and what holders of bonds were seeking to foreclose the mortgage, telling him that Mr. Jannopoulo would pay their interest if they would accept the same. He declined to answer, saying that we had no right to know, that Robinson, trustee had a right to foreclose the mortgage without disclosing for whom he was acting. I think I asked Mr. Romare also before any defense was filed in the case, but whether he declined to answer or professed not to know, I do not remember. At any rate he did not tell me any one for whom Robinson was acting.

N. J. HAMMOND.

Sworn to and subscribed before me this 20th Jan., 1892.

ALEX. W. SMITH,
Notary Public, Fulton Co., Ga.

The within testimony of N. J. Hammond taken before me as sole commissioner, the 20th day of January, 1892.

EDWARD R. AUSTIN,
Sole Com'r.

Testimony of Kelly and Romare.

Bill to Foreclose Mortgage. In the United States Circuit Court for the Northern District of Georgia.

J. J. ROBINSON, TRUSTEE,
versus
ALABAMA AND GEORGIA MANUFACTURING COMPANY, ET AL.

We consent that the testimony of Mr. Thomas J. Kelly and Mr. Paul Romare, both of Atlanta, Ga., may be taken without a commission by Mr. E. R. Austin, as sole commissioner, and sworn to before any notary public, and so used as evidence, subject to legal objections as to relevancy.

ABBOTT & SMITH,
Solicitors for Plaintiff.

N. J. & T. A. HAMMOND,
For Defendants, as per Record.

Mr. Thomas J. Kelley being interrogated, answers as follows:

Direct Examination by Mr. Abbott.

Q. What business were you engaged in the latter part of December, 1890, and the first part of January, 1891?

A. I was manager of the advertising department of the Constitution, in this city.

Q. How did the Constitution Publishing Co. get its mail at the time inquired about?

A. We got it from a box in the post office.

Q. How frequently during say from the 27th of December, 1890, up to and including the 2d of January, 1891, did the Constitution send to get the mail?

A. Four times a day the year round.

Q. Here is a letter dated December 29, 1890, addressed to the Constitution Publishing Co., signed by D. Jannopoulo, president, attached to Mr. Jannopoulo's interrogatories. Look on that letter and explain what the words "Entered January 1, 1891," mean.

A. That is a mark in our office, meaning that my checking clerk entered that to appear on the next day Jan. 2d.

Q. In whose department of the Constitution Publishing Company's business would that letter fall?

A. In my department.

Q. Exclusively?

A. Yes, sir. If there was money in it it might accidentally be thrown into another department.

Q. Did or not any money come in this letter?

A. I do not think so. I do not remember.

Q. How early on each day at the time required about would letters enclosing orders for advertisements have to reach you in order to be inserted in the paper next day?

A. By eight o'clock at night. I do not believe we have been getting any mail from any place at night that late except Georgia mail from Augusta. But if we got an advertisement at that hour it would appear the next day.

Q. State whether or not there was any mail during the time inquired about arriving at the post office in the evening at that time.

A. I do not know.

Q. Suppose the mail came by the W. & A. R. R. at 6:40 in the evening, on the days inquired about, would or would not the Constitution Publishing Company get the mail directed to it through its drawer at the post office after that hour?

A. It would.

Q. If this letter had reached Atlanta through the mails, arriving here at 6:40 or earlier on the 31st of December, 1890, would or would not the advertisement referred to in this letter have been inserted in the *Constitution* on the morning of the first of January, 1891?

A. In all probability it would.

Q. Have you any personal recollection of this letter, and that advertisement?

A. I have no recollection of them, except as appears on the records in the books at my office.

Q. From your method of doing business, what are you willing to state as to the time when that advertisement was put into the newspaper after it reached your hands?

A. We inserted it as soon as we received it.

Q. From all the facts and circumstances, and looking at the letter, what is your recollection as to the time when that letter was received?

A. As I stated before, I have no recollection at all of it. I can only testify as far as our records show.

Q. If that letter had been received by you prior to eight o'clock P. M. on the 31st of December, 1890, what issue of the *Constitution* would that have appeared in?

A. I do not stay as late as eight o'clock at the office. I generally go home about six o'clock. If the letter had been received after that time, our night clerk would have manipulated it, or seen to its proper direction; and it would probably have appeared in the next day's issue.

Cross Examination by Mr. Hammond.

Q. Was there any difference in time between the time when the advertisements for the Sunday paper were made up, and those for other days?

A. No difference.

Q. Is not the Sunday edition made up more completely than any other paper by a fixed hour of the day?

A. No, sir. The limit is no later for the Sunday paper than any other.

Q. Do you know who put the words, "Entered, Jan. 1, 1891," on this letter, before referred to?

A. The checking clerk.

Q. Who put the words "1891," inclosed in a circle, on the same letter?

A. The advertising clerk.

Q. Do you know who wrote those words in red ink on Mr. Jannopoulo's letter above referred to?

A. I do not know.

Q. Do you know who wrote on the advertisement itself, enclosed in that letter, and attached to Mr. Jannopoulo's interrogatories as the next exhibit, the words, "Jan. 2d, D. 3. T."

A. The foreman of the printing department, Mr. Pilgrim.

Q. Who went after the mails at that time?

A. Some one of the clerks in the office. Sometimes one would go, sometimes another.

Q. Did they get very much or very little mail?

A. We got a very large mail—a sack about 20 in. x 18 in. full.

Q. That sack was carried each time to the post office?

A. Yes, sir.

Q. When the mail came to the *Constitution* office, to whom was it delivered first?

A. To Mr. R. A. Hemphill, if he was there. If not, to Mr. Crusselle or myself.

Q. Then what was done to the mail after Mr. Crusselle got it?

A. It was assorted and the personal mail thrown into a box. And after that the remainder was opened and read, and money received was thrown into the cash box, the mail

for the weekly department thrown into that box, and the other mail thrown into the proper boxes.

Q. Does your office connect with Crusselle's?

A. Yes, sir. They are connected by a door. They are practically the same office.

Q. After you got this letter into your possession, what was the regular course of disposing of it?

A. After the mail is gone over by me I separate it, and take the orders, if there are any, and after seeing that they are all right, I hand them over to my advertising checker. Put them on her desk on a hook. She is the one who marked "Entered Jan. 1st, 1891," on letter referred to.

Q. Does that entry indicate the date entered, or the date on which the advertisement is to appear?

A. We enter it on our books on the date stamped, and it appears in the next day's issue. On Sundays we do not go through the mail as systematically.

Q. Suppose the letter came too late Saturday night to get in Sunday morning's paper, when would it appear?

A. In all probability it would not get in until Tuesday.

Q. But if the advertisement were to appear on Jan. 1st., and the first were Sunday, then the stamp on it would be entered Dec. 31st, would it not?

A. Yes, sir.

Q. You know nothing in point of fact, do you, about the receipt of this identical letter?

A. Nothing at all, except what the records show.

THOS. J. KELLEY.

Sworn to and subscribed before me this the 8th day of January, 1892.

(SEAL) THOMAS J. PEEPLES,
Notary Public.

The above testimony taken before me as sole commissioner, the 7th day of January, 1892.

EDWARD R. AUSTIN.

Mr. Paul Romare being interrogated, answers as follows:

Direct Examination by Mr. Abbott.

Q. What position did you hold in the Atlanta National Bank in Dec., 1890, and January, 1891?

A. Vice president.

Q. If the Atlanta National Bank received any money on deposit for the purpose of paying the coupons on the bonds of the Alabama & Georgia Manufacturing Company which fell due January 1st, 1890, state when you first received information of such a deposit?

A. It was about midday of the second of January, 1891 that I was informed that the remittance had been made from St. Louis to the Atlanta National Bank to pay those coupons.

Q. Do you or not know when in point of fact that remittance reached the bank?

A. I do not.

Q. In whose department of business in the bank do letters enclosing remittances, etc., fall?

A. They first go into the hands of the corresponding clerk. He opens the mail, and if there is anything that is not in his line, he hands it over to the cashier.

Q. Who was the cashier at the time enquired about?

A. Mr. C. E. Currier.

Q. State whether or not the banks close on the first day of January in each year.

A. All the banks close on the first of January, as it is a legal holiday, and no busines is transacted.

Cross Examination by Mr. Hammond.

Q. Did not I visit you in your office on the second day of January 1891, during banking hours in the morning, and tell you that W. T. Huguley wished to know whether Mr. Jannopoulo had provided for paying the July interest coupons and interest thereon, and did you not tell me that he had not?

A. I do not recollect distinctly. If I did say that, I had not heard anything from it. That must have been previous to the information which I afterwards got on the subject.

Q. Did I not in that conversation ask you, when you said that no provision had been made for payment, if Jannopoulo were to telegraph you to pay, whether you would not pay; and did you not reply, "Yes, I will pay if he telegraph?"

A. I do not recollect the interview at all. I do not doubt it, but it has escaped my memory.

Q. When in January did you find out what Mr. Currier telegraphed to the Laniers about paying the coupons due in July, 1890?

A. It must have been the second.

Q. Do you know what time of day it was?

A. I do not remember.

Q. When did he tell you that he had telegraphed?

A. I do not know the hour of the day.

Q. Did you tell him anything about whether he had made a mistake in his telegram?

A. I do not recollect whether I told him about any mistake.

Q. Do you remember a conversation between you and me a few days after the second of January, 1891, in the bank, in which I inquired whether the Laniers had paid any of the coupons due July, 1890, and in which you responded that they had paid some due January, 1891, but none due July, 1890?

A. I do not recollect that.

Q. Do you recollect my saying that they had no authority to pay such coupons, but were only instructed to pay those due July, 1890?

A. I remember now that Mr. Currier I think made a mistake in the telegram. He spoke of the coupons due January, 1891, instead of those due July, 1890.

Q. Where does the president of the Atlanta National Bank stay?

A. In New York.

Q. He was not in Atlanta at that time?

A. I do not think he was.

P. ROMARE.

Sworn to and subscribed before me this 8th day of January, 1892.

(SEAL) D. B. DeSAUSSURE,
Notary Public.

The above testimony of Mr. Romare was taken before me as sole commissioner, on the 7th of January, 1892.

EDWARD R. AUSTIN.

Testimony of Torbett.

Bill to Foreclose Mortgage. In the United States Circuit Court for the Northern District of Georgia.

J. J. ROBINSON, TRUSTEE,
versus
THE ALABAMA & GEORGIA MANUFACTURING CO., ET AL.

We consent that the testimony of Mr. M. B. Torbett of Atlanta, Ga., may be taken without a commission by Mr. E. R. Austin as sole commissioner, and sworn to before any notary public, and so used as evidence, subject to legal objections as to relevancy.

ABBOTT & SMITH,
Solicitors for Plaintiff.

N. J. & T. A. HAMMOND,
For Defendant.

Mr. Torbett being examined answers as follows:

By Mr. Hammond:

Q. What is your business, and how long have you been engaged in it?

A. My business is insurance. I have been in it about five years.

Q. If you have ever insured the property once owned by the Alabama & Georgia Manufacturing Company, and now occupied by the Huguley Manufacturing Company, below West Point, Ga., state in what companies you insured it, and in what amounts and how.

A. I insured the property as shown by the paper hereto attached. I insured the Alabama & Georgia Manufacturing Company, previous to its being called the Huguley Manufacturing Company, in the name of H. C. Fisher, receiver, and then after H. C. Fisher sold the property I became acquainted with Jannopoulo and Orrick and Graham through him. And after that I solicited the insurance, and they gave it to me.

Q. At that time what insurance had you on it?

A. $37,500 in two policies. Those were written through the Atlanta Home Office, and the policies at that time were at the Lowery Banking Company.

Q. To whom was the insurance payable?

A. To Robinson, Yancey & Huguley. About a year and a half ago, the whole of the insurance was placed in our hands—in July, 1890, I think. We then had every bit of the insurance except $40,000 that had been placed with W. S. Jackson & Son, of West Point. About a month or two after that, one of the $10,000 policies which had been written by W. S. Jackson & Son was canceled, and I was telegraphed to provide for it. I immediately had written two five thousand ($5,000) dollar policies. Since that time, as the insurance agents of the Huguley Mfg. Co., through D. Jannopoulo, whom I recognized as president, and from whom I received my instructions, I have carried on the risk $200,000, on printed form hereto attached, in the companies and for the amounts as shown in the attached statement, loss payable clauses being as therein stated; but I do not confine my testimony to the names of the companies, for in our business there are often changes in the companies, but we have always kept the property of the Huguley Mfg. Co., covered to the amounts as represented in this statement.

Q. Is that insurance, payable to the different persons and to the different amounts there stated, in a mere arbitrary thing, or was it fixed by inspection?

A. When it was turned over to me, I went there, went over the mill, and made a thorough inspection.

Q. What proportion is there between the value of the property and the $200,000 of aggregate insurance represented on said list?

A. I thought it worth more than $200,000, or else would not have taken the risk.

Q. What was and is the usual proportion between actual and insurable value?

A. On manufacturing property like this we always have actual value at least 15 per cent or 20 per cent larger than the insurable. I visit the mill at least twice a year for inspection.

Q. Do you know whether in that time the property has increased or decreased in value?

A. I do not think it has decreased, for they seem to be making improvements.

By Mr. Abbott:

Q. Have you any experience as an adjuster of losses?

A. I have adjusted losses several times.

Q. You are acquainted with the rules, customs, etc., of adjustment of losses?

A. Yes, sir.

Q. In case of a loss under the fire policy the company is not restricted to or bound by the estimate when the policy is taken out, is it?

A. No, sir.

Q. Is it not always subject to revision?

A. Certainly it is.

Q. Suppose it had turned out to be true that this property was not worth $200,000, upon adjusting the loss, but was worth much less, then would not all these three interest be pro-rated? For example, suppose the property had been worth only $125,000, and it had been destroyed by fire, then would not J. J. Robinson, Yancey, and Huguley, as trustees, and the St. Louis Trust Co., for other bondholders, together with the other interest represented, pro-rate in the insurance?

A. In that case, if totally destroyed, and it was proven by adjustment that the property was worth only $125,000—then Robinson, Yancey and Huguley trustees, and the St. Louis Trust Co., for bondholders and the Huguley Mfg Co., would be indemnified as the amount of insurance with loss payable clause in their favor would be to the total amount of loss; but the above is a mere supposition, and owing to the fact that the companies have their special agents who are continually making inspections, those special agents would not allow their companies to remain on a risk to such a great extent over insured as the above supposition would imply.

Q. Now suppose the property should turn out upon adjustment of the loss after the fire, to be of any value less than $200,000, then each interest above represented would draw upon the fund in the same proportion as you answered above?

A. Yes, they will be reimbursed or indemnified as the amount of insurance is to the actual loss, in all cases.

By Mr. Hammond:

Q. Were you the only insurance agent of those companies mentioned in that list who inspected it from time to time?

A. Special agents of the other companies inspected it also.

Q. Suppose the policies had been too large in their estimation, what would they have done?

A. Canceled them immediately, as they always consider overinsurance hazardous.

Q. Did either W. T. Huguley or Robinson know how that insurance was placed, at any time within the past year, before this suit was brought in January, 1891?

A. Yes, sir. W. T. Huguley knew it.

Q. State whether or not any dissatisfaction has been expressed by any one.

A. None. W. T. Huguley has been in my office a number of times, and I allowed him to look over the statements.

Q. Do you know Mr. Robinson personally?

A. No, sir.

By Mr. Abbott:

Q. You do not know that Mr. Robinson ever knew of the condition of the insurance, do you?

A. I have an indistinct recollection of meeting him,—but do not remember clearly—about the time the transfer was made by H. C. Fisher.

Q. You do not remember having any conversation with him about this insurance, do you?

A. No, sir.

By Mr. Hammond:

Q. Do you know for how much it was insured when H. C. Fisher had it?

A. I think it was $200,000. There was some $13,000 on the stock. In case of loss these parties would participate in that $13,000 just as in the other.

By Mr. Abbott:

Q. Whether these trustees would participate in the fund produced by the destruction of the stock would depend on the mortgage, would it not?

A. The insurance company would not recognize any mortgage at all. The policies themselves have the loss payable clause. They would take a receipt signed by those loss payees, before paying any loss.

M. B. TORBETT.

Testimony taken before me as sole commissioner, the 29 of December, 1891,

EDWARD R. AUSTIN.

Sworn to and subscribed before me this 30th day of December, 1891.

(SEAL)

JNO. K. OTTLEY,
Notary Public, Fulton Co., Ga.

The Property of the Huguley Manufacturing Company.

$ 40,000 On their four-story, metal roof brick factory building, including pipes and piping therein; known as the "Huguley Manufacturing Co.'s Cotton Mills;" operated by water power on the Chattahoochee river, about seven miles below West Point, Ga.

$140,000 On their fixed and movable machines, machinery and apparatus, water wheels, pumps and all machinery attached thereto, shafting, pulleys, hangers, belting, tools, furniture, fixtures, and all implements and utensils in their business, or for ordinary repairs, contained therein, or which may be added.

$ 10,000 On their stock, manufactured or unmanufactured, and in process of manufacture, together with all supplies and findings contained therein.

$ 5,000 On their three-story stone metal roof picker house, including pipes and piping therein, located eighteen feet on the south of the main building.

$ 2,000 On their fixed and movable machines, machinery and apparatus, water wheels, pumps, and all machinery attached thereto, shafting, pulleys, hangers, belting, tools, furniture, fixtures and all implements and utensils in their business, or for ordinary repairs, contained therein, or which may be added.

$ 3,000 On their stock, manufactured or unmanufactured, and in process of manufacture, together with all supplies and findings contained therein.

$200,000.

$200,000 total insurance permitted.

Permission granted to run until nine o'clock at night, to set up and adjust machinery and to make all ordinary repairs.

To attach to and be made part of Policy No.....
of the.....Insurance Company of.....
which covers pro rata on each of the above items to the amount of.....Dollars.

.....Agents.

Printed form referred to in the within testimony.

E. R. AUSTIN, *Com'r.*

To D. Jannopoulo, President:

Below find record of policies as renewed and in existence July 22, 1891, on Huguley Manufacturing Co., near West Point, Ga., with loss payable favor: First mortgage bond holders, trustees, J. J. Robinson, W. C. Yancey and W. T. Huguley.

London and Lancashire	1842332	Feb.	5,92.	$12,500
Liverpool London and G	2773	"	17,"	25,000
Scottish Union & Nat'l	1537977	"	17,"	5,000
Scottish Union & Nat'l	1537991	Mar.	19,92,	5,000
Commercial Union Assur. Co.	102465	"	27,92,	12,500
London Assurance Corporation	1207618	June	25,92,	5,000
				$65,000—$65,000

With loss payable favor St. Louis Trust Co., trustees for bondholders.

Commercial Union Assur. Co.	102516	July	8, 92,	$25,000
Orient Insurance Company	1243	"	8, "	15,900
Rome Fire Insurance Co.	25014	"	8, "	7,500
Merchants of Newark, N. J.	698617	"	10, "	2,500
				$50,000—$50,000

Without any loss payable clause.

Commonwealth of N Y.	11022	Aug.	25, 92.	$ 5,000
Union Assur. Asso. of London	919636	"	23, "	5,000
Scottish Union & National	1543216	Mch.	24, "	10,000
Scottish Union & National	1543238	May	26, "	10,000
Norwich Union	1956424	July	25, "	10,000
American of Philadelphia	3299	"	15, "	15,000
Merchants of Newark, N. J.	728579	"	12, "	5,000
Phœnix of London	3242706	"	22, "	10,000
Royal Ins. Co., of Liverpool	4367619	"	15' "	15,000
				$85,000—$85,000
				$200,000

Statement of insurance referred to in within testimony.

E. R. AUSTIN, *Com'r.*

In the Circuit Court of the United States for the Northern District of Georgia.

UNITED STATES OF AMERICA,
Northern District of Georgia.

To G. N. Craft and L. M. Harris:

Whereas there is a certain matter in controversy now pending and to be tried in the said Circuit Court, between J. J. Robinson, trustee, and Alabama & Georgia Manufacturing Company and others, and

Whereas, J. J. Robinson, trustee, is a material witness in said suit on behalf of the defendant, and can not attend said Circuit Court in person without manifest inconvenience:

Now Know Ye, That reposing special trust and confidence in your prudence and fidelity, you are hereby appointed, and you, or any two or more of you, are hereby authorized and required to cause the said J. J. Robinson personally to come before you, and after being duly sworn, to examine him concerning the said suit, agreeably to the interrogatories hereunto attached, and the answers to the same being plainly and distinctly written, you are to send the same, together with this writ, closed up under your hands and seals, to the clerk of said Court, at Atlanta, Ga., on or before the first Monday in November, 1891.

Witness the Honorable Mellville W. Fuller, Chief Justice of the Supreme Court of the United States, this 5th day of October, 1891.

O. C. FULLER, *Clerk.*

Direct Interrogatories.

Bill to Foreclose Mortgage. United States Circuit Court, Northern District of Georgia.

J. J. ROBINSON, TRUSTEE,
versus
THE ALABAMA & GEORGIA MANUFACTURING COMPANY ET AL.

Interrogatories to be answered by J. J. Robinson, trustee, said plaintiff and a witness material for said defendants, who

resides in LaFayette, Chambers county, Alabama.

1. At whose instance did you as trustee authorize your name to be used in the bringing of said suit? If you had any request in writing attach the same to your answer, and state how you know the signatures thereto to be genuine, and how do you know that the persons who requested you to sue held or holds any of the bonds of the Alabama and Georgia Manufacturing Company?

2. Upon whose information did you state in your said bill that said Alabama and Georgia Manufacturing Company's property was not insured as required by the contract?

3. What was the date of the request to you as trustee to sue, and the date or dates of such information about insurance?

4. If at any time since said suit was brought, any offer has been made to pay any interest due on said bonds or the coupons thereof, state when and by whom, and if in writing attach original offer.

5. State whether or not you accepted such offer, and if you refused, state all the reasons for such refusal, and if it was upon the request of others, upon whose request, how made, and if in writing attach such request to your answer.

N. J. & T. A. HAMMOND,
JOHN C. ORRICK,
Attorneys for Defendant Corporations.

Cross-Interrogatories for Plaintiff.

1. Did you not bring the suit yourself and is it not true that you did not authorize anybody to use your name, but on the contrary did you not take the matter in hand and in pursuance of your duties, as trustee for the bondholders, bring the suit to foreclose the mortgage in this case.

2. State all you know that will benefit the plaintiff.

3. Did you not go to Atlanta yourself with your counsel, Mr. Denson, and advise with counsel of record in the case before you brought the suit.

DORSEY, BREWSTER & HOWELL,
N. D. DENSON,
ABBOTT & SMITH,
Solicitors for Plaintiff.

STATE OF ALABAMA, }
Chambers County. }

By virtue of a commission issued out of the Honorable Circuit Court of the United States for the Northern District of Georgia, to us directed, we have caused J. J. Robinson, the witness in said commission named to come before us and being duly sworn true answers to make to the interrogatories to said commission annexed deposes and answers as follows:

To the 1st interrogatory he answers:

I was requested by Mr. L. Lanier and N. D. Denson as executor of the will of M. T. Walker deceased, to institute suit to collect the bonds involved in this suit. I received a letter from Mr. L. Lanier asking me to do so. I did not preserve the letter and I can not attach it. I know it was signed by Mr. Lanier. It was his handwriting which I know. He also requested me in person.

Mr. N. D. Denson as executor requested me personally. I received no written request from him. Mr. Abbott as attorney for the Atlanta National Bank also requested me in person to bring the suit for foreclosure. I know that Mr. N. D. Denson as executor held ten thousand dollars of the bonds. the record of the probate court of which I am judge show this fact. I have no personal knowledge that L. Lanier held any of the bonds. I know some went into his hands as guardian. I also know that he requested payment of interest coupons on some of said bonds. I do not know of my personal knowledge that the Atlanta National Bank held any of the bonds. Mr. A. D. Moore, whose wife was entitled to some of the bonds, under the will of M. T. Walker also requested me to proceed to collect the bonds.

To the 2d interrogatory:

He says, I received information about the insurance from Mr. L. Lanier and W. S. Jackson of West Point.

To the 3rd interrogatory:

I do not remember the exact date but it was between the 1st day of Jany., 1891. and the time the suit was brought. I had received the information about the insurance for several months prior to the bringing of the suit and up to the time the suit was brought.

To the 4th interrogatory:

He says Mr. J. T. Higginbotham, on or a few days before July 1st, 1891, came into my office at LaFayette, Ala., and offered to pay the coupons on said bonds falling due Jany. 1st, 1891. I told him I held none of the coupons, but if he would leave the money with me as trustee and any of the holders presented them, I would pay them. He stated he was only authorized to pay on delivery of the coupons. This was not in writing.

To the 5th interrogatory:

He says: As stated in his answer to the last interrogatory, Mr. Higginbotham offered to pay on delivery of the coupons, witness held none of the coupons, and Mr. Higginbotham would not pay unless the coupons were delivered to him. I did not accept or refuse, no request to refuse was given me.

To the 1st X. Intgy:

He says, I brought the suit I have told the holders of the bonds frequently that whenever it was necessary to protect their interest, either as to insurance or other matters that they could do so in my name. As to this suit I investigated the facts and thought it my duty when requested by parties, who I believe held more than one-half of the bonds, who were anxious to collect their bonds, to bring this suit.

To the 2 X. Intgy:

He says, nothing more than is contained in his answer.

To the 3 X. Intgy:

He says he first employed Mr. Denson to investigate the matter for him and if he became satisfied that it was witnesses duty to proceed to foreclose, and that there had been default in the conditions of the mortgage or deed of trust, then he could bring suit and also secure additional counsel. The bill was prepared and sent to me for my affidavit. I took it and went to Atlanta, and after investigation thought it my duty to bring the suit, and the suit was filed.

J. J. ROBINSON.

Answered, subscribed and sworn to before us, the witness writing his own answers by our consent and in our presence. This October 21, 1891.

(SEAL) G. N. CROFT,

(SEAL) L. M. HARRIS,

Commissioner.

Service acknowledged and copy waived. Let commission issue in blank without order of court.

October 2, 1891.

DORSEY, BREWSTER & HOWELL,
ABBOTT & SMITH,
Solicitors, etc.

UNITED STATES OF AMERICA,
Northern District of Georgia.

In the Circuit Court of the United States for the Northern District of Georgia.

To R. A. S. Freeman and L. M. Harris:

Whereas, There is a certain matter in controversy now pending and to be tried in the said Circuit Court, between J. J. Robinson, trustee, and Alabama & Georgia Manufacturing Company.

And Whereas, W. C. and L. Lanier are material witnesses in said suit on behalf of the complainants, and can not attend said Circuit Court in person without manifest inconvenience.

Now Know Ye, That reposing special trust and confidence in your prudence and fidelity, you are hereby appointed, and you, or any two or more of you, are hereby authorized and required to cause the said witnesses personally to come before you, and after being duly sworn, to examine concerning the said suit, agreeably to the interrogatories hereunto attached, and the answers to the same being plainly and distinctly written, you are to send the same, together with this writ, closed up under your hands and seals, to the clerk of said court, at Atlanta, Ga., to the court now in session.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 14th day of November, 1891.

O. C. FULLER, *Clerk.*

Direct Interrogatories.

Bill for Foreclosure. In Circuit Court of United States, Northern District of Georgia. Filed 21 Jan., 1891.

J. J. ROBINSON, TRUSTEE,
versus
ALABAMA & GEORGIA MFG. CO. ET AL.

Interrogatories to be exhibited to W. C. Lanier and L. Lanier, material witnesses for the plaintiff in said cause and who reside in Chambers in the State of Alabama, and whose post office address is West Point, Georgia, and who do business in West Point, Georgia.

FOR L. LANIER.

1. What business are you engaged in and where do you do business and with whom are you associated in business?

2. Are you or not a holder and owner of any of the bonds of the Alabama & Georgia Manufacturing Company? If so how many of such bonds? And coupons, if any?

3. Has or has not the interest been paid on such bonds as you hold, and if so, when was each installment of interest paid? Are you or not now the holder of any unpaid coupons of said company for interest on its bonds, if so, how many? Please give the number of such coupons, the date of maturity of the same, and the aggregate amount. State fully.

4. If you ever made any demand for payment of said interest coupons, state when, where and of whom such demand was made and what was the result of such demand.

5. State whether or not the Alabama & Georgia Mfg Co. is now doing business and was doing business at the time of the filing of this bill? If you say said company was not doing business then, state when it ceased to do business and whether it was doing business on 1 July, 1890, and 1 January, 1891?

6. State whether or not said Ala. & Ga. Mfg Co. had any office in West Point, Georgia, on the 1 July, 1890, or on the 1 January, 1891, and whether or not said company had any officers or agents at said place or elsewhere at the dates inquired about. If you state that said company ceased to do business at any time. State when and under what circumstances. State fully. State whether or not it had any property, money or effects of any kind in West Point or elsewhere on the dates above inquired about?

7. If you took any steps to procure action to be taken

by the plaintiff Robinson, trustee, state what steps you took and when? And what was the result of same if anything?

8. State what amount of insurance against loss by fire has been kept on the property known as the Ala. & Ga. Mfg. Co.'s Mills, if any, say since the first of January, 1890, and how you know this? In whose favor were the policies of insurance written, if any such policies were placed on said property. State fully.

9. What do you know if anything about the condition of said property now? State what was the condition at the time of the filing of this bill in this cause. Answer this question as to the state of preservation the property was in at the time inquired about. If the property has been repaired any time since it passed out of the hands of the said Ala. & Ga. Mfg. Co., state what repairs have been made. State fully both as to realty and personalty.

10. If any offer by any person to pay interest coupons on said bonds, falling due 1 July, 1890, was made. State by whom such offer was made and when and where. State particularly.

11. What amount of said bonds do you control, either in your right or as agent or trustee, if you control any and state whether or not you exercise your election at any time to treat the whole of said principal and interest as due and to whom, if any one, you gave notice of such election.

12. Was or was not the property of the Ala. and Ga. Mfg. Co. sold at public outcry in January, 1890? What announcement if any was made at said sale as to what if anything said property was sold subject to.

13. What claim, if any, did W. T. Huguley make at that time or since as to his being interested in said property? What did you ever hear him say on the subject? What do you know if anything, about his being interested in said property now in the property involved in this litigation?

14. Did you ever see any paper, writing or contract between any of defendants or other persons with defendants or some of them on the subject of the property covered by the deed of trust set up in this cause? If so, where did you see it? Have you a copy of it? If so, attach to your answer. If you

have no copy state the contents of the same fully. State the name of each party thereto—the interest if any he represented and the name of each signer. State fully.

15. State all the facts you know going to show that W. T. Huguley was interested in said property at the time of the filing of this bill in this cause.

16. Suppose it should have appeared that Mr. Currier, cashier of the Atla. Natl. Bank had wired you on the 2nd of Jany. 1891, to pay July, 1890 coupons of Ala. & Ga. Mfg. Co., bonds—what effect if any would such a telegram have had?

17. Explain the method adopted by the parties at interest for the payment of the interest coupons on said bonds due Jany. 1, 1890. If such coupons were paid.

18. State all that you know that will benefit the plaintiff as fully as if interrogated thereto.

DORSEY, BREWSTER & HOWELL,
N. D. DENSON,
ABBOTT & SMITH,
Sols. for Plaintiff.

FOR W. C. LANIER.

1. What business are you engaged in and where do you do business.

2. What do you know if anything about the payment or non-payment of interest coupons of the Ala. & Ga. Mfg. Co., bonds falling due July 1, 1890? State fully and how you know the facts about which you testify.

3. State whether or not the Ala. & Ga. Mfg. Co., had on the 1, July, 1890, or the 1 Jany. 1891, any office or place of doing business in West Point, Ga., or elsewhere? State whether or not it had any officers or agents at said times and place or elsewhere? What property, money or effects, of any kind did said company have if any at said time and place.

4. If you state that said company ceased to do business at any time state when.

5. If you know what steps if any the holders of said bonds and coupons took looking to the bringing of the suit in this case, state what steps were taken, by whom and when, and with what result.

6. State all that you know that will benefit the plaintiff.

7. Do you know or not as to what amount of insurance against loss by fire has been kept on the property known as the factory property now in the possession of Huguley Manufacturing Co., since 1, Jany, 1890—to whom payable in case of loss. State fully.

DORSEY, BREWSTER & HOWELL,
N. D. DENSON,
ABBOTT & SMITH,
Sols. for the Plaintiff.

Cross Interrogatories.

In Circuit Court of U. S., N. Dist. of Georgia.

J. J. ROBINSON, TRUSTEE,
versus
ALABAMA AND GEORGIA MANUFACTURING COMPANY, ET AL.

For W. C. Lanier and L. Lanier to be answered by each of them.

1. When and where was the last election for president of the Alabama & Georgia Manufacturing Company held? Was not W. H. Huguley then elected president?

2. Was not W. H. Huguley for many years past and is he not yet a member of the firm of W. H. Huguley & Co., of West Point, Ga.? At whose store or place of business was the office of the Alabama & Ga. Mfg. Co., kept each year since 1870 up to the putting of said A. & G. Mfg. Co., in the hands of a receiver?

3. How long have you had connection with said company and in what capacities or relations? Who have been its financial agents since 1870?

4. Did not said W. H. Huguley & Co., have on their store or on their curtains in the store a sign or signs that the office of the Ala. & Ga. Mfg. Co., was there? If so when was said sign removed or taken away if at all. Was it not still there from the time the firm was the financial agent of said company until the sale of their place of business in November, 1891?

5. Have not each member of W. H. Huguley & Co., lived in West Point, Ga., for many years past and do they not still live there?

6. Give the place or office at which the interest on any

bond held by you has been paid each year since its issuance? When was it paid at or by the Atlanta N. Bank? If you did demand it at said bank of what person and when?

7. If you made any demand for interest on any such bond when it was not paid state of whom, when and where and what reason was given for its non-payment? Why did you not demand payment at Atlanta N. Bank where it was advertised to be ready for bondholders?

8. Did not Jno. T. Higginbotham as agent for the present owners offer to pay you the interest this year 1891, and did you not refuse to accept the same? What did Higginbotham offer and what did you refuse and in refusing what reason did you give therefor?

9. What is your business? If bankers, have you not long been the correspondents at LaGrange of the Atlanta National Bank? What interest have you in any factory and how far is it from the Ala. & Ga. Mfg. Co.'s. former factory mortgaged to secure your bonds and coupons?

10. Were not W. H. Huguley rival bankers and owners of large interests in the Ala. & Ga. Mfg Company and residing in West Point while you were? Were you not and are you not yet on hostile terms with W. T. Huguley? When did you speak to him last or he to you on friendly terms? When to the other members of that firm?

11. What correspondence did you or either of you, or your firm or bank have by letter or telegram with the Atlanta National Bank, or any of its officers in December, 1890, or in January, 1891, about the bonds of the Ala. & Ga. Mfg. Company or the interest thereon? Attach the letter or telegrams sent to you and any sent by you to it or to any such officer? And if you can not attach originals attach copies.

12. Did not Mr. Currier telegraph your firm or bank on the 2d of January, 1891, to pay the July, 1890, coupons or words to that effect and what reply did you make? Attach that telegram and if you can not then a copy? What did he telegraph you that day? What did any one from Atlanta National Bank telegraph you that day?

13. When you received that telegram which coupons did you then have in your possession and which did you control? What effort, if any, had you made to have them

paid and what did you make after that dispatch was sent you? Did you not claim and announce in West Point that the telegram of 2 January, 1891, authorized payment of coupons due January, 1891, but not those due July, 1890?

14. When one of you or both of you were the financial agents of said Alabama & Georgia Manufacturing Company to what extent was it insured and to whom were the policies payable? Since said bonds were issued to what extent each year has the same been insured and to whom payable? State all the particulars so far as you know on which the insurance since said Alabama & Georgia Manufacturing Company's mill was sold by Fisher, receiver, differ from the insurance had and kept thereon before said receiver was appointed and pending the litigation which resulted in said sale?

15. How do you know how said property is insured? If any complaint about this insurance has been made except in this pending suit by whom and when and to whom was it made?

16. Was not Robinson trustee, requested in writing to take action in this case? Who got up that writing—who began the project, who disclosed or wrote it and who signed it? When and where was each signature made thereon and who delivered it to Robinson and when? Where was that paper when you last saw it?

17. Who employed counsel to file this bill and what part of their fee did each contract to pay and how and when are counsel to be paid?

18. Did not the Atlanta National Bank pay W. C. & L. Lanier $1414.40 on about the 18th of July, 1890 on account of sixty-eight coupons and interest thereon cut from some of said bonds of the Ala. & Ga. Mfg Co.? Give the numbers of the bonds and the ownership of each on the 10th July, 1890, and during January, 1891, and the dates of the maturity of said 68 coupons?

19. Give a statement from the books of W. C. & L. Lanier of each item of dealings between that firm or either of its members with H. C. Fisher or Atlanta National Bank or any other person relating to or connected with the coupons of any of said $65,000 bonds. Have you done so fully?

20. If either of you made any demand for interest on any

of said bonds which failed to be paid at any time state when and of whom and where and of which coupons? State whether the demand was in writing and if so who has the writing? If the response was in writing attach the response?

21. If you claim that any coupon was paid by W. C. & L. Lanier or at their office explain how paid? Who furnished the funds to pay with? Who authorized W. C. & L. Lanier to pay at their office? The coupons being payable to bearer did you not simply advance the money on them and send them or present them elsewhere for payment? If you did more than this last question asked about state all you did and who furnished the money or gave the authority for you to act as paymaster for the A. & G. Mfg Co.?

22. When was each of you last in the mill or on the mortgaged premises? What examination did you then make of the same and how do you know the present condition?

23. What is the value of the mortgage premises over and above $65,000, and if the insured buildings and machinery were destroyed what would the mortgaged land, site, etc., be worth? What was bid for said mortgage property by those who bought it in January, 1890, of Fisher receiver and what was the next highest bid? Was it not then being sold subject to the mortgage now sought to be foreclosed?

24. Who are the "parties" meant by you in your answer to 18th direct question? Give the name of each one.

N. J. & T. A. HAMMOND,
Attys. for Defts as per record.

Answers to Direct Interrogatories.

GEORGIA, }
Troup County. }

By virtue of a commission issuing out of the Hon. Circuit Court of the United States for the Northern District of Georgia to us directed we have caused W. C. & L. Lanier the witnesses in said commission named to come before us, and being duly sworn true answers to make to the interrogatories to said commission annexed deposes and answers as follows:

To 1st Int. L. Lanier answers, Banking, West Point, Ga. W. C. & L. Lanier.

To 2nd Int. L. Lanier answers. Yes, and directly represent over thirty thousand dollars of them, with coupons due on them since July 1st, 1890.

To 3rd. Int. L. Lanier answers. Interest was paid on these bonds up to 1st July, 1888, at the Co.'s office in West Point, Georgia, then at office of W. H. Huguley & Co., West Point, Ga. Interest due Jany. 1st, 89, was not paid until June, 1889, then it was paid by H. C. Fisher, receiver, of the Ala. & Ga. Mfg. Co., whose office was in the office of Harrington Bros., West Point, Ga. The interest due July 1st, 89, was not paid till Jany., 1890. It was then paid at the bank of W. C. & L. Lanier, West Point, Ga. The interest due Jany 1st, 1890, was not paid till July, 1890. It was then paid by W. C. & L. Lanier at their bank in West Point, Ga. The interest due July 1st, 1890, was not paid Jany 1st, 1891, and is still unpaid and I now hold coupons of $35,000 of these bonds due July 1st, 1890, to the amount of $1,400, due Jany 1st, 1891, to the amount of $1,400, and on $34,000 of these bonds due July 1st, 1891, to amount of $1,200, aggregate amount of coupons unpaid $4,000. The coupons due July 1st, 1890, are numbered 13. The coupons due Jany 1st, 1891, are numbered 14, and the coupons due July 1st, 1891, are numbered 15.

To 4th Int. L. Lanier answers: I made demand for payment of the interest coupons referred to due July 1st, 1890, on that day and those due Janaary 1st, 1891, on that day, all of W. S. Jackson last elected treasurer of the company, at his office in West Point, Ga., and of Messrs. Harrington Bros. the agents and managers of the company, elected at the July, 1888, meeting of the directors and the last elected agents and managers of the company, at their office which was the last known office of the Ala. & Ga. Mfg. Co.

The response of each, Jackson and Harrington Bros. was they had no funds to pay the interest with.

To 5th Int. L. Lanier answers: The Alabama & Georgia Mfg. Co. is not now doing any business and was not at the time of the filing of this bill. The company was placed in the hands of a receiver under order of Judge Harris on application

of A. T. Dallis and other creditors of the company in Oct., 1888. Messrs. Harrington Bros. then managers of the company being appointed temporary receivers. In Dec., 1888, Mr. H. C. Fisher was made permanent receiver with office in office of Harrington Bros., West Point, Ga. In May or about that time in 1889 the mill was shut down and the property all sold in Jany., 1890, by Fisher, receiver. It was not doing business on 1st July, 1890, or 1st Jany., 1891.

To 6th Int. L. Lanier answers: The Alabama & Georgia Mfg. Co. had no office in West Point, Ga., on 1st July, 1890, or 1st Jany., 1891. Nor did it have any office or agents at the dates inquired about, either at West Point or elsewhere. The company ceased to do business under its elected officers in Oct. 1888, it at that time was placed in the hands of a receiver and sold by receiver in Jany., 1890, and I know of no money, property or effects of any kind belonging to said Co., in West Point, or elsewhere, the dates above inquired about.

To 7th Int. L. Lanier answers. I did in my own interest and as the agent of others representing in all about fifty thousand dollars of the $65,000 of these bonds after the default in the interest due 1st July, 1890, in January, 1891, request Judge J. J. Robinson, trustee, to proceed to foreclose the trust deed executed by him as trustee to protect the first mortgage bondholders of this company. This request was granted and the suit now pending is the result.

To 8th Int. L. Lanier answers. I do not know. Several large insurance company's had declined to continue their policies on the property on account of its condition. W. S. Jackson & Son in whose office most of the insurance had heretofore been placed had no insurance on the property, and the large owners of the bonds requested me to learn something of the insurance. I called on Capt. Lowery of Atlanta and he showed me policies for 60 or $65,000 stating he had learned the property was idle and had requested his company (the Home of Atlanta) to cancel its policy of $5,000 and should recommend the cancellation of all he had, as the policies were of no value, as the property was unoccupied without notice. Hearing Mr. Graham one of the purchasers of the property

at the sale 1st January, 1890, could inform me of the amount of insurance on the property, I called at his office in New York, in June, 1890. Did not see him, met his partner, who informed me that there was no insurance there on the property. That the Providence Mutuals "had agreed to write insurance on the property, but learning it was idle declined to issue the policies. My efforts at the time to learn of any insurance failed except this mentioned and Mr. Robinson, trustee, seems not to have been informed in regard to the insurance by the present operators of the property, nor any one else.

To 9th Int. L. Lanier answers. The mill was built in 1868 and 1869 and has been running since except a year or two in 1889 and 1890. During the winter and spring of 1889 part of the metal roof was blown off and more of it was blown off in the spring of 1890 and the machinery was damaged by rain and rust very much then. The machinery has reached the (age) allotted it by its builders, most of it now being twenty years old. No machinery or repairs of a very substantial character has been added or done, and as a security to the bondholders it is rapidly depreciating in value.

To 10th Int. L. Lanier answers. No offer was made to me by any one to pay interest coupons due July 1st, 1890, at the date of maturity of said coupons or within six months thereafter.

To 11th Int. L. Lanier answers. Thirty-four thousand dollars now. Eleven thousand dollars of bonds then represented by me at the time of the service of this suit, have since been distributed to the heirs of the deceased owner (the coupons of these eleven thousand dollars of bonds remain unpaid till now since 1st July, 1891). I did in January, 1891, consider the interest coupons of the forty-five thousand dollars of bonds which was remaining unpaid on the 1st July, 1890, and not paid on the 1st day of July, 1891, as in default and did treat the whole of said bonds and interest as due and as the representative of others and for myself in connection with others requested Judge J. J. Robinson, trustee, to proceed to foreclose the trust deed to protect the holders of the bonds.

To the 12th Int. L. Lanier answers: The property of the

Alabama & Georgia Mfg Co. was sold the first Tuesday in Jany, 1890. Announcement was made by the receiver who was selling the property that the sale was made subject to the trust deed (now being foreclosed by Judge Robinson, trustee).

To Ints. 13, 14, 15, L. Lanier states he is instructed not to answer.

To 16th Int. he answers: I know nothing more except as answered in these direct and cross answers.

To 17th Int. L. Lanier answers: No telegram was received by me from the Atlanta Natl Bank or Mr. Currier, cashier, on the 2nd of Jany, 1891. If I had have received such telegram I would not have accepted the money on the defaulted coupons.

To 18th Int. L. Lanier answers. They were presented at the bank of W. C. & L. Lanier and was paid by W. C. & L. Lanier or their teller, complying with telegram received latter part of June, 1890, requesting us to pay those coupons maturing 1st Jany, 1890.

L. Lanier's Answers to Cross Int.

To 1st X. Int. L. Lanier answers. At office of Harrington Bros., in West Point, Ga., in July, 1888, W. H. Huguley was elected president.

To 2nd X. Int. L. Lanier answers. I so understood. Don't know whether he is now or not. At the office of W. C. & L. Lanier, till July, 1881, and at the office of W. H. Huguley & Co., till July, 1888; since July, 1888, at the office of Harrington Bros., all in West Point, Ga., till the property was sold in January, 1890; since January, 1890, it has had no office here.

To 3rd X. Int. L. Lanier answers. From 1868 till July, 1881, I was a stockholder and most of the time a director, and our firm, W. C. & L. Lanier, were treasurers and managers of the company. In July, 1888, I was elected a director; held no office. W. C. & L. Lanier from 1868 or 1870 till July 1, 1881. W. H. Huguley & Co. from that time till July, 1888, when Harrington Bros. were elected managers of the company's business and served [illegible] receiver was appointed.

To 4th X. Int. L. Lanier answers. Yes, on one of the curtains, and part of it is there still.

To 5th X. Int. L. Lanier answers. W. H. Huguley, I think, considered West Point his home until within the last few years. Since the latter part of 1888 or first part of 1889 he has spent most of his time on his farm in Alabama. I have not seen him about the store of W. H. Huguley & Co. since latter part of 1888 or first part of 1889. Mr. Nolan lives in West Point, and I think Mr. W. T. Huguley considers West Point his home.

To 6th X. Int. L. Lanier answers. The first interest coupons of the Alabama & Georgia Mfg Co.'s bonds were due 1st July, 1884, and these and the subsequent maturing coupons to 1st July, 1888, were paid at the office of W. H. Huguley & Co., the then office of the company. The interest coupons due January 1st, 1889, were not paid till latter part of June, 1889. They were paid then by H. C. Fisher, receiver of the company, at the office of Harrington Bros., in West Point, Ga.

The interest coupons due July 1st, 1889, were paid at the bank of W. C. & L. Lanier in Jany., 1890.

The interest coupons due 1st Jany., 1890, were paid at bank of W. C. & L. Lanier in West Point, Ga., June and July, 1890. I never collected any of these interest coupons of the Atlanta Natl. Bank or from any one else except as stated in this answer. I made no demand for this interest on the Atlanta Natl. Bank.

To 7th X. Int. L. Lanier answers. I made demand of W. S. Jackson the last treasurer of the company and Harrington Bros., the last agents and managers of the company at the office of Harrington Bros., in West Point, Ga., which was the last known office of the Alabama & Georgia Mfg Co. on the 1st of July, 1890, for payment of the interest coupons due that day and on the 1st day of Jany., 1891, for the interest due that day. Both refused payment, saying they had no funds of the company. The interest on these bonds is stipulated in these interest coupons as payable at the companies office in West Point, Ga. It had no reason to expect this interest to be paid in Atlanta and did not see the advertisement referred to.

To 8th X. Int. L. Lanier answers. J. T. Higginbotham on 1st July, 1891, said he would pay the interest coupons due 1st Jany., 1891, but offered no money. I asked him if

he would pay the interest due that day 1st July, 1891. He answered no; he had no funds to pay that interest with. This conversation was in the bank of W. C. & L. Lanier at West Point, Ga. I answered that I declined to accept payment of any interest coupons as I considered the principal as well as the interest due.

To 9th X. Int. L. Lanier answers. Bankers at West Point, Ga., have no office at LaGrange, Ga. I am a stockholder and officer of the West Point Mfg Co. about 3 miles distant from property of the Ala. & Ga. Mfg Co.

To 10th X. Int. L. Lanier answers. W. H. Huguley was not a rival banker. W. H. Huguley & Co., did some banking business at West Point and W. H. Huguley was a stockholder of the Alabama & Ga. Mfg. Co., and W. H. Huguley & Co., were stockholders of this Co., I think, and resided at West Point, Ga. as answered before.

I have not been am not now on hostile terms with any one. Can't remember when I last spoke to him or he to me. Can't remember when I last spoke to W. H. Huguley, he lives on his farm in Alabama and can not remember when I saw him last.

I often speak to J. H. Nolan of the firm.

To 11th X. Int. L. Lanier answers. I had none. Our firm received on 3rd Jany., 1891, two telegrams marked Exhibit A and B, which covers all the correspondence I know of with said bank myself or our firm.

To 12th X. Int. L. Lanier answers. On the 3rd of Jany., 1891, our firm received the two telegrams referred to in answer to 11th cross. We made no reply. We received no other telegram pertaining to this matter.

To 13th X. Int. L. Lanier answers. I had in my possession and control the interest coupons numbered 13, 14 and 15 and due July 1st, 1890, and Jany. 1st, 1891. I had presented the interest coupons due 1st July, 1890, for payment the date they were due, and presented the coupons due on 1st Jany., 1891, for payment that day, and payment of each had been refused. Made no efforts to collect them afterwards except through the trustee, J. J. Robinson. I never received any notice of any change of the place of payment of interest on these coupons. I made no announcement that I can remember, the two telegrams were received on the

3rd day of Jan., 1891. Neither of them were received before the 3rd day of Jany., 1891, under the rules of the telegraph company, no night telegram can be delivered until the day following and the telegram dated 2nd Jany., 1891, is a night message and was not delivered to us until the day of the 3rd of January.

To the 14th X. Int. L. Lanier answers. I do not remember the amount of insurance at the time asked about. The company was not bonded when we were its managers. I do not know to what extent or to whom payable. The company under its contract was required to keep ample insurance to protect the holders of the $65,000 of first mortgage bonds.

I can not give the particulars asked for. Don't know except that during the time it was in the hands of the receiver $65,000 of insurance was on the property for the benefit of these bondholders.

To 15th X. Int. L. Lanier answers. I do not know how this property is insured. Complaints were made by A. T. Dallis, L. D. Hutchinson and others, bondholders in my presence during the time the mill was not running and since it has been running.

To 16th X. Int. L. Lanier answers. Yes, I wrote him requesting him to take action in the matter, signed only by myself, it was mailed to him and I have not seen it since. Can't say who began the project, it was the desire of nearly all the holders of bonds as expressed to me.

To 17th X. Int. L. Lanier answers. I understand Judge Robinson employed Mr. Denson, of Lafayette, Ala., and Messrs. Abbott, Dorsey, Brewster & Howell were associated with him and that their fee would be paid out of the proceeds of the property when sold.

To 18th X. Int. L. Lanier answers. We sent 68 coupons due Jany. 1st, 1890, amounting with interest thereon to $1,414.40 to the Atlanta National Bank and took credit for the amount and I append copy of W. C. & L. Lanier's letter enclosing them which gives the numbers (and marked Exhibit C). Bonds 37 to 66 are held by Mrs. L. Lanier guardian; 21 to 36 by Mrs. L. F. Yancey; 99 to 104 to L. D. Hutchinson or B. C. Ferrell; 75 to 88 by A. T. Dallis or to estate of Mrs.

Elliott and 129 to 130 by J. W. Burdett, trustee, and these parties I think are yet the holders of these bonds all of these coupons were due Jany. 1st, 1890.

To 19th X. Int. L. Lanier answers. The letter marked Exhibit C covers all the transactions we had with the Atlanta National Bank or that bank with ours relating to or connected with the coupons of any of said $65,000 bonds and the statement of W. C. & L. Lanier in account with H. C. Fisher, marked exhibit D is a full statement of our dealings with Fisher receiver relating to or connected with the coupons of any of said $65,000 bonds and the statement W. C. &. L. Lanier in account with H. C. Fischer, marked Exhibit D, is a full statement of our dealings with Fischer receiver relating to or connected with the coupons of any of said $65,000 bonds and these two statements cover all our dealings with any one relating or connected with the coupons of any of said bonds, that we can find on our books, we have fully.

To 20th X. Int. L. Lanier answers. I made demand for interest due on these bonds July 1st, 1890, and Jany. 1st, 1891, and July 1st, 1891, of W. S. Jackson and Harrington Bros. at the office of these people, which was the last known office of the Ala. & Ga. Mfg. Co., in West Point, Ga., the days the interest fell due, 1st July, 1890, and 1st Jany., 1891, and of J. T. Higginbotham on the 1st of July, 1891, for interest due that day, in the office of W. C. & L. Lanier, West Point, Ga., where he had called, he said, to pay interest due 1st Jany., 1891. The 1st July, 1890, and the 1st Jany., 1891, and the 1st July, 1891, interest was not paid—payment being refused reason given—no funds.

These coupons were numbered 13 maturing 1st July, 1890.
numbered 14 maturing 1st Jany., 1891.
numbered 15 maturing 1st July, 1891.

Demand was not in writing.

To 21st X. Int. L. Lanier answers. The interest coupons paid by W. C. & L. Lanier were those maturing July 1st, 1889, paid out of funds deposited Dec. 31st, 1889, by H. C. Fisher receiver and those maturing Jany 1, 1890, paid by W. C. and L. Lanier latter part of June and 1st July were paid by us in compliance with a telegram received from the Atlanta National Bank of Atlanta, Ga., requesting us to pay them.

This fully explains the payment made by W. C. & L. Lanier.

To 22nd X. Int. L. Lanier answers I was in the mill latter part of 1889 and made such examination as to give me a fair idea of its state of preservation. Its present condition is known from representation of reliable persons familiar with the property.

To 23rd X. Int L. Lanier answers. Very little if any. I should say fifteen or twenty thousand dollars. Fifty-nine or sixty-nine thousand dollars. About one thousand less. Yes, so stated by the receiver.

To 24th X. Int. L. Lanier answers. Mrs. L. F. Lanier guardian, Mrs. L. F. Yancey, Mr. L. D. Hutchinson, J. W. Burdett, B. C. Ferrell, A. T. Dallis or Mrs. Elliott. We made no record of ownership.

L. LANIER.

Answered, sworn to and subscribed before us this

(L. S.) L. M. HARRIS, *Com'r.*

(L. S.) R. A. S. FREEMAN, *Com'r.*

To 1st Int. W. C. Lanier answers. Banking business in West Point, Ga.

Answers of W. C. Lanier.

To 2d Int. W. C. Lanier answers. W. C. & L. Lanier held coupons of Ala & Ga. Mfg Co. due July 1st, 1890, which were not paid. Neither were those paid that fell due Jany 1st, 1891.

To 3rd Int. W. C. Lanier answers. I know of no office in West Point or elsewhere. I know of no office. I know of none.

To 4th Int. W. C. Lanier answers. I understood that the property was sold in Hamilton, Harris county, Ga., in Jany, 1890.

To 5th Int. W. C. Lanier answers. I don't know.

To 6th Int. W. C. Lanier answers. I know nothing more.

To 7th Int. W. C. Lanier answers. I do not know.

Answers of W. C. Lanier to Cross.

To 1st X. Int. W. C. Lanier answers. I do not know.

To 2nd X. Int. W. C. Lanier answers. I do not know. At the office of W. C. & L. Lanier up to July, 1881, after this date W. H. Huguley & Co. and Harrington Bros.

To 3rd X. Int. W. C. Lanier answers. W. C. & L. Lanier

were stockholders and officers in said company to July, 1881. W. C. & L. Lanier to July, 1881.

To 4th X. Int. W. C. Lanier answers. Yes, part of it is there yet.

To 5th X. Int. W. C. Lanier answers. I do not know whether W. H. Huguley and W. T. Huguley consider West Point their home or not. J. H. Nolan the other member of the firm has a home here.

To 6th X. Int. W. C. Lanier answers. W. C. & L. Lanier collected interest on coupons from the date they were issued till July 1888 at the office of W. H. Huguley & Co., H. C. Fisher receiver paid the interest due Jany 1st, 1889, on 31st Dec., 1889, he deposited $2,704 with W. C. & L. Lanier to pay interest due July 1st, 1889.

W. C. & L. Lanier paid said amount for the coupons due July 1, 1889.

In June, 1890, W. C. & L. Lanier paid by request of the Atlanta National Bank the interest due January 1, 1890.

The Atlanta National Bank reimbursed W. C. & L. Lanier for the amount paid in June, 1890. W. C. & L. Lanier never presented the coupons to the Atlanta National Bank. Have no instruction to do so.

To 7th X. Int. W. C. Lanier answers I made no demand. L. Lanier was intrusted with the collections of the coupons. I did not see any advertisement to present coupons at Atlanta National Bank.

To 8th X. Int. W. C. Lanier answers. John T. Higginbotham asked me a few days since if I would receive the interest on coupons. I answered him no, but that he might see L. Lanier.

To 9th X. Int. W. C. Lanier answers. Bankers in West Point have no office in LaGrange. I am stockholder and officer in the West Point Mfg Co., about 3 miles from the Ala. & Ga. Mfg Co.'s place.

To 10th X. Int. W. C. Lanier answers. I do not know. I do not know that I am mad with any one. I kept (no) dates. Whenever business requires we speak.

To 11th X. Int. W. C. Lanier answers. The telegrams hereto attached answers all I know anything about.

To 12th X. Int. W. C. Lanier answers. See answer to 11th Cross.

To 13th X. Int. W. C. Lanier answers. When W. C. & L. Lanier received telegram January 3rd, 1891, we held coupon No. 13 due July 1st, 1890. We could make no effort as we did not know who to go to. I made no announcement.

To 14th X. Int. W. C. Lanier answers—I do not remember. There were no bonds out on property. I do not know. I know nothing about the insurance.

To 15th X. Int. W. C. Lanier answers—I know nothing about the insurance.

To 16th X. Int. W. C. Lanier answers—I do not know.

To 17th X. Int. W. C. Lanier answers—I do not know.

To 18th X. Int. W. C. Lanier answers—Yes, sometime, about 1st July, 1890. We did not have the bonds registered and can not give the numbers.

To 19th X. Int. W. C. Lanier answers—The statement hereto attached marked exhibit D, covers W. C. & L. Lanier's transactions.

To 20th X. Int. W. C. Lanier answers—I could make no demand, knowing of no officer. L. Lanier was intrusted with collecting the coupons.

To 21st X. Int. W. C. Lanier answers—W. C. & L. Lanier paid out the money H. C. Fisher, receiver, deposited with us to pay coupons due July, 1889. Another payment was made at the request of the Atlanta National Bank in June, 1890.

To 22nd X. Int. W. C. Lanier answers—Do not remember being there in ten years. I have made no examination.

To 23rd X. Int. W. C. Lanier answers—I do not know. I do not know.

To 24th X. Int. W. C. Lanier answers—I do not know.

W. C. LANIER.

Answered, sworn to and subscribed before us this ———.

(L. S.) L. M. HARRIS, *Com'r.*

(L. S.) R. H. S. FREEMAN, *Com'r.*

Exhibit A.

NIGHT MESSAGE.

The Western Union Telegraph Company.

Received at 746 P 189
Dated ATLANTA, Ga. 1-2
To *W. C. & L. Lanier.*

Please say all January coupons of the Alabama and Georgia Mfg Co. and draw on us coupons attached.

C. E. CURRIER, *Cashier.*

Copy.

Exhibit B.

The Western Union Telegraph Company.

Received at 189
Dated ATLANTA, Ga. 1-3
To *W. C. & L. Lanier.*

My telegram of yesterday should have read pay July coupons and interest not January.

C. E. CURRIER, *Cashier.*

Exhibit C.

W. C. & L. LANIER,
BANKERS AND MANUFACTURERS.

WEST POINT, Ga., July 4, 1890.

Mr. C. E. Currier, Cashier, Atlanta.—DEAR SIR:—

Enclosed find for credit, coupons Ala. & Ga. Mfg Co, due Jany. 1, 1890:

14 coupons No. 12, bonds 75 to 88	$	280 00
Interest		11 20
6 coupons No. 12, bonds 99 to 104		120 00
Interest		4 80
2 coupons No. 12, bonds 129 and 130		40 00
Interest		1 60
16 coupons No. 12, bonds 21 to 36		320 00
Interest		12 80
30 coupons No. 12, bonds 37 to 66		600 00
Interest		24 00
	$	1,414 40

Yours truly,

(COPY) W. C. & L. LANIER.

Exhibit D.

WEST POINT, GA.

H. C. Fisher, Rec'r Ala. & Ga. Mfg. Co.
In acct. W. C. & L. Lanier, Bankers.

1889.			1889.	
Dec. 31.	To ck. . .	$416	Dec. 31. By ck . . .	$2704 00
1890	" " . .	956 80		
Jany 1.	" " . .	332 80		
	" " . .	728		
	" " . .	41 60		
7	" " . .	104		
8	" " . .	124 80		

(Signed) W. C. & L. LANIER.

Acknowledgment of Service.

Service acknowledged, copy, notice and filing waived. Let commission issue without order of court in blank on application. We name Sevoy Harris, Esq., as a commissioner. Nov. 19, '91.

N. J. & T. A. HAMMOND,
Dfts. Attys. as pr Record.

United States of America, Northern District of Georgia.
In the Circuit Court of the United States for the Northern District of Georgia.

To L. M. Harris, H. T. Woodyard:

Whereas, There is a certain matter in controversy now pending and to be tried in the said Circuit Court, between J. J. Robinson, trustee, and Alabama & Georgia Manufacturing Company et als.;

And Whereas, John T. Higginbotham is a material witness in said suit on behalf of the defendant, and can not attend said Circuit Court without manifest inconvenience;

Now Know Ye, That reposing special trust and confidence in your prudence and fidelity, you are hereby appointed, and you, or any two or more of you, are hereby authorized and required to cause the said John T. Higginbotham personally to come before you, and after being duly sworn,

to examine him concerning the said suit, agreeably to the interrogatories hereunto attached; and the answers to the same being plainly and distinctly written, you are to send the same, together with this writ closed up under your hands and seals, to the clerk of said court, at Atlanta, Ga., to the court now in session.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 14th day of November, 1891.

(SEAL) O. C. FULLER, *Clerk.*

Interrogatories.

Bill for Foreclosure of Mortgage. In United States Circuit Court for Northern District of Georgia.

J. J. ROBINSON, TRUSTEE,
versus
ALABAMA & GEORGIA MANUFACTURING COMPANY ET AL.

Interrogatories to be answered by John T. Higginbotham a witness material to said defendants and who resides at West Point, Georgia.

1st. Since the sale of the property of said defendant by Fisher receiver, in January, 1890, what if any improvements, repairs or useful additions of machinery has been made in or upon said mills and premises and by whom and at what cost? How does the condition of said property now compare with its condition at the date of Fisher's sale?

2.—If W. H. Huguley & Co., in West Point, had any sign in or upon their place of business as to the office of the said Ala. & Ga. Mfg Co. state what that sign was, and where it was put up, and where and when if ever it has been removed? State any other facts to benefit said defendants.

N. J. & T. A. HAMMOND,
Atty's. for Defts as per Record.

Cross Interrogatories.

1. If you state that any improvements have been added to the machinery of cotton mill state particularly what particular kind or piece of machinery. Where did it come from and from was it purchased, and what did each piece

cost? How do you know the facts about which you testify? Did you buy the machinery yourself or did some one else buy it and how do you know?

2. Who was superintendent of the mill from time the Huguley Manufacturing Co. was organized till time the bill was filed in this case, say February, 1891?

3. How or in what capacity were you connected with the mill? Are you an expert factory man? Do you know enough about a mill to know when machinery is needed? Where did you learn the business and how long have you been engaged in it?

4. What did Logan Owens have to do with the factory during time inquired about? Was he not superintendent, and is he not a good mill man? Does he not know enough about a cotton mill to be able to tell when machinery is needed or repairs or findings required?

5. How do you the condition of the mill at time of Fisher's sale and after date?

6. After the sale by Fisher inquired about the Ala. & Ga. Mfg. Co., had nothing left but a sign did it? Didn't that sign even belong to Huguley or Huguley & Co. The corporation didn't own it, did it? Is it not true that the corporation was sold out entirely—that it had nothing left?

DORSEY, BREWSTER & HOWELL,
ABBOTT & SMITH,
N. D. DENSON,
Plaintiffs Solicitors.

Answers to Interrogatories.

GEORGIA, }
Troup County. }

By virtue of a commission issuing out of the Hon. Circuit Court of the United States for the Northern District of Georgia, to us directed, we have caused John T. Higginbotham the witness in said commission named to come before us and being duly sworn true answers to make to the interrogatories to said commission annexed, deposes and answers as follows:

To 1st Int. he answers—There has been repairs on water house making it almost new, and other valuable repairs on factory building, both on the inside and outside, all the operative houses were overhauled and repairs and two new ones

built. The machinery was all overhauled, old parts repaired and new parts added. This was done by the Huguley Mfg. Co., under the supervision of Logan Owens and myself, at a cost of between four and five thousand dollars. I think the property now, as compared with the property when Fisher sold it, is at least twenty-five per cent better.

To 2nd Int. he answers—W. H. Huguley & Co., did have a sign with the lettering: W. H. Huguley & Co., Treas. Alabama & Georgia Mfg. Co., put up on the front door of the place of business in West Point, Ga. This sign I think was put up in 1887 and has not been removed.

Cross.

To 1st X. Int. he answers:

1890.			
Nov.	17th	From Morten, Ree & Co., Baltimore.	
		100 rollers for spinning frame .20	$ 20 00
"	10	100 spindles for winding frame with steps and collars, from Riley & Gray, Boston	85 50
Dec.	1st	From Bridesbury Mfg. Co., Phila.	
		12 yarn beams	96 00
"	11	From Morten, Reed & Co., Baltimore.	
		2 sets card clothing	326 04
"	10	Ryly & Gray, Boston.	
		100 roving flyers (8 inch)	162 80
		18 " " (7 inch)	20 70
		24 " " (7 inch)	27 60
		12 slubbing flyers (10 inch)	22 20
"	20	From Morton, Reed & Co. Baltimore.	
		Right and left hand angle gear, bevel gear, up gear, pinions, etc., all permanent repairs on cards	243 40
1891.			
Feb.	21	523 stirrups for spinning frames	13 07
Mar.	4	42 loom castings, 32 finished and cart geer, 24 cast geer	64 20
Feb.	26	Bridesburgh Mfg. Co.	
		4 spining frame cylinders	194 00
Mar.	19	Stoddard Lovering & Co., Boston.	
		15 sets card clothing complete	1,699 02
July	14	Morten, Reed & Co.	
		Copper Rollers for cylinders	69 80
June	10	Bridesburg Mfg. Co.	
		24 picker shafts and other pieces for cards and looms spinning frames, &c	143 80
		In addition to the above is some other bills for repair material furnished by Pool & Hunt, Balt., R. D. Cole & Co., Newnan, Ga., and West Point Iron Works of West Point, Ga., which bills have been misplaced. They will approximate about	150 00
		Repairs on water house, underpinning, flooring and roof of factory building	945 00
		Two new houses on premises	503 00
		Repairs on other houses	200 00

I know these facts because I was there assisting and superintending these repairs, paying out the money and approving the bills for the same. I made the orders for the machinery and checked the pieces when they came, and saw them added to the machinery and put some of them on myself.

To 2nd X. Int. he answers: I was superintendent part of the time and Logan Owens was superintendent part of the time, he had that position when the bill was filed. I am superintendent now.

To 3rd X. Int. he answers: While Owens was superintendent it was my duty to look after all the general interest of the mills, buying cotton, wood, keeping mills supplied with help, &c. I am not. I think I do. I have been working with mill machinery since about 1875 in different mills.

To 4th X. Int. he answers: He was superintendent part of the time and is a good mill man. He does. He is considered one of the best mill men in the south.

To 5th X. Int. he answers: I know the condition of the machinery by having gone there and inspected the same and immediate after the sale I took charge as superintendent and found the machinery badly rusted and in general bad order.

To 6th X. Int. he answers: I have been told that there was money in Fisher's hands and goods belonging to the Co. in New York. I knew there was supplies in Fisher's hands that was not sold to the amount of eight hundred or a thousand dollars. I think the sign belongs to Huguley & Co. I think not. I think they had supplies that was not sold at Fisher's sale in Hamilton at the time the mill was sold.

J. T. HIGGINBOTHAM.

Answered sworn to and subscribed before us this Nov. 24th, 1891.

L. M. HARRIS,
Comr.

(L. S.)

H. T. WOODYARD,
Comr.

(L. S.)

Service acknowledged and copy waived. Let commission issue in blank without order of court.

Nov. 14, 1891.

DORSEY, BREWSTER & HOWELL,
ABBOTT & SMITH,

Sols. Plff.

Filed in clerk's office 14 day of Nov. 1891.

O. C. FULLER, *Clerk.*

In the Circuit Court of the United States for the Northern District of Georgia.

UNITED STATES OF AMERICA,
Northern District of Georgia.

To W. R. Christian and L. M. Harris: Whereas, There is a certain matter in controversy now pending and to be tried in the said Circuit Court, between J. J. Robinson, trustee, and the Alabama and Georgia Manufacturing Company and others, and

Whereas, John T. Higginbotham is a material witness in said suit on behalf of the defendants and can not attend said Circuit Court in person without manifest inconvenience:

Now Know Ye, That reposing special trust and confidence in your prudence and fidelity, you are hereby appointed, and you, or any two or more of you are hereby authorized and required to cause the said John T. Higginbotham personally to come before you, and after being duly sworn, to examine him concerning the said suit, agreeably to the interrogatories hereunto attached; and the answers to the same being plainly and distinctly written, you are to send the same, together with this writ, closed up under your hands and seals, to the clerk of said court at Atlanta, Ga., on or before the first Monday in November, 1891.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 5th day of October, 1891.

O. C. FULLER, *Clerk.*

Interrogatories.

Bill to Foreclose Mortgage. United States Circuit Court Northern District of Georgia.

J. J. ROBINSON, TRUSTEE,
versus
THE ALABAMA AND GEORGIA MANUFACTURING COMPANY, ET AL.

Interrogatories to be answered by John T. Higginbotham, a witness material for said defendants, who resides at West Point, Georgia, in said district.

1. Do you know the parties?

2. Where was the financial business of the Alabama & Georgia Manufacturing Co. done before the company was placed in the hands of Receiver Fisher, and where were the coupons to its bonds before that time paid? If there was such a firm as W. H. Huguley & Co., who composed the firm, and where did it do business? Where did M. & L. Lanier do business at the same time? What was the business of said W. H. Huguley & Co., and of said Laniers?

3. If any one had possession of the Ala. & Ga. mill's property between the time when the Hugulevs controlled it and the time when it was in the hands of Fisher receiver, who were they, and how long did they have such possession; where was their place of business; and did they or not pay any coupons during that time, and if so, to whom?

4. If during the pendency of the suit to foreclose the mortgage under which Fisher receiver sold the property either of said Laniers had any part in the proceedings, state what part and how do you know?

5. What was the state of feeling between said Laniers and W. T. Huguley at that time, and how do you know?

6. What rival interest if any had said Laniers against the Alabama & Georgia Mfg Co., and when did said interest begin, and when end, if it is ended?

7. If you had anything to do with the mill of the Huguley Manufacturing Co. in January, 1891, state what was your connection with it. If you received any letters from D. Jannopoulo, its president, or any one connected therewith at or about said time, attach the same to your answers,

in order to show at what time they were written, and state when you received the same, by what route, they came, and how you know the route and remember the date of receipt.

8. State whether or not the place of business of W. H. Huguley & Co. has been changed since January, 1890, and if not state how long they have occupied the place of business where they now are, and about which you have testified above.

9. If you had anything to do with the payment or offer to pay any of the coupons of the Alabama & Georgia Manufacturing Company's bonds, state when, what notice if you gave, what payments if any you made what offers of payments were refused, if any, and generally all that you did in the premises, and at whose instance you did the same.

10. If you have heard anybody interested as the holder of a bond of the Alabama & Georgia Manufacturing Company, for whose benefit said suit is progressing, say anything touching his holding or reasons for suit, please state when, where and the conversation of each such person pertinent to the business; and state all other facts you may know in favor of defendants in said cause.

N. J. & T. A. HAMMOND,
JNO. C. ORRICK,
Defts. Atty. except W. T. Huguley.

Cross Interrogatories.

What is your business, are you not employed by the Huguley Mfg Co.? Have you not been in the service of that company since its organization?

Were you not employed by the Huguley's or D. Jannopoulo between the time of the sale of the property and the time for the Huguley Mfg Company.

2. State what kind of business you did for your employer during the time inquired about.

DORSEY, BREWSTER & HOWELL,
N. D. DENSON,
ABBOTT & SMITH,
Sols. for Plff.

Answers.

Bill to Foreclose Mortgage. United States Circuit Court, Northern District of Georgia.

STATE OF GEORGIA, }
Troup County. }

By virtue of a commission issuing out of the honorable Circuit Court of the United States for the Northern Dstrict of Georgia, to us directed, we have caused John T. Higginbotham, the witness in said commission named to come before us, and being duly sworn true answers to make to the interrogatories to said commission annexed deposes and answers as follows:

To 1st Int. he answers. I do.

To 2nd Int. he answers. In West Point, Troup county, Georgia. In the banking office of W. H. Huguley & Co., in West Point, Ga. W. H. Huguly, J. H. Nolan and W. T. Huguley composed the firm of W. H. Huguley & Co. and done a general grocery and banking business in West Point, Ga., in the building known as the Huguley building. They were secretary and treasurer for the Alabama & Georgia Mfg Co. This should be W. C. & L. Lanier and they done a general banking business in West Point, Ga.

To 3rd Int. he answers. It was in the hands of W. H. Harrington or Harrington Bros., as temporary receiver. I think about three months. In West Point, Ga. I don't know.

To 4th Int. he answers. I don't know that either of the Laniers were parties to the suit, but I saw L. Lanier prompting and advising with the attys for the defence.

To Int. 5th he answers—Their personal feelings were very unpleasant towards each other, I know, from having business transactions with all the parties and they expressed their feelings freely to me.

To 6th Int. he answers—W. C. & L. Lanier controlled and managed the West Point Mfg Co., and W. H. Huguley

& Co. controlled and managed the Ala. & Ga. Mfg Co., both companies manufacturing the same line and grade of goods. This rivalry commenced according to my recollection about 1882 or 1883. If ended now I do not know.

To 7th Int. he answers—I did. I was cotton buyer and looking after the general interest of the Huguley Mfg Co. I hereto attach letter and envelope showing when written, when mailed and when received by me, they are marked A and B, and made part of this answer. I can't say what route, as we had two mails during the night at that time, one mail from east and one from west. I know this because the 31st Dec. was our pay day at the mill and after getting the letter at 8 o'clock A. M. hereto attached marked B. I waited for the train known here as the Cannon Ball which arrived at West Point a few minutes after 10 o'clock A. M. When it arrived from Atlanta I was at the car shed and received the money from the express agent. I left at once for the mill and paid off that afternoon.

To 8th Int.—he answers—They have not. They have occupied the Huguley building since 1884, latter part of said year, and are still occupying the same building.

To 9th Int. he answers—I have. I paid A. S. Elliott interest on $7,000 bonds in February, 1891. I tendered J. W. Burdett interest on $1,000 bonds which payment he refused. This was in February, 1891. In 1st July, 1891, I tendered payment to L. Lanier of the firm of W. C. & L. Lanier who held bonds for several parties, the interest on the bonds that he held, I don't remember the exact amount. He refused, stating they would press the suit to foreclose. About 25th June, 1891, I tendered J. J. Robinson, trustee, for the bondholders of the Ala. & Ga. Mfg Co., the interest due on bonds of said company (this was the January interest for the year 1891), and demanded of him the coupons. He refused the payment stating he did not have the bonds in his possession. I then tendered N. D. Denson executor or administrator of the estate of M. T. Walker the interest on bonds he held. He declined to accept the payment that day, stating he would write me later what he would do in the matter. He wrote me refusing the payment, stating we will press our suit (this is lost or mislaid so I can't attach it). In July,

1891, I again tendered J. W. Burdett the interest on bonds he held, which he again refused to accept. In July, 1891, I paid Mrs. Sallie Huguley, Mrs. S. F. Huguley, G. A. Huguley and H. D. Huguley the January interest on bonds held by them. Sometime in July or August, 1891, I paid W. C. & L. Lanier interest on bonds held by John F. Hooper. All of this was done at the instance of D. Jannopoulo, president Huguley Mfg Co., or his attorneys.

To 10th Int. he answers. All the parties to whom I tendered payment of interest, refused, claiming that the interest was forfeited and that the bonds were due thereby and said they would proceed to press their suit to foreclose and that they wanted their money out of the bonds. J. W. Burdett gave as his reason for refusing payment the matter was in the hands of his attorney.

Answers to Cross Interrogatories.

To 1st X. Int. he answers—I am now superintendent Huguley Manufacturing Co. I am. I have been employed in the service of said Co., since 23d June, 1890. I was employed by the Huguleys until 23d June, 1890, from the time of the sale of said property, at which time I was employed by D. Jannopoulo, president, to work for the Huguley Mfg Co.

To 2nd X. Int. he answers—I looked after their general mercantile business and collections.

J. T. HIGGINBOTHAM.

Answered, sworn to and subscribed before us this 20th day October, 1891.

(L. S.) W. R. CHRISTIAN, *Com'r.*
(L. S.) L. M. HARRIS, *Com'r.*

Service acknowledged and copy waived. Let commission issue in blank without order of court.

October 3, 1891.

DORSEY, BREWSTER & HOWELL,
ABBOTT & SMITH,
Solicitors, etc.

ST. LOUIS, Mo., Dec. 29th, 1890.

John T. Higginbotham, Esq., West Point, Ga. DEAR SIR—: We have expressed to-day money for pay-roll to

Logan Owens, supt. for last pay-roll, but have omitted to send the amount you asked for yourself. You will therefore take out of the money sent you for cotton purchase what you need, sending us receipt for same, and we will credit your account. Yours very truly,

HUGULEY MFG CO.
Martin S. Termenstein, Secy.

I certify that I received this letter at 8 o'clock A. M., December 31st, 1890.

J. T. HIGGINBOTHAM.

Copy B.

(Post marked. Saint Louis, Mo., Dec. 29, 5:30 P. M.)

J. T. HIGGINBOTHAM, ESQ.
West Point, Ga.

"A"

Bill to Foreclose Mortgage.

In the United States Circuit Court for the Northern District of Georgia.

J. J. ROBINSON, TRUSTEE,
versus
THE ALABAMA AND GEORGIA MANUFACTURING COMPANY,

We agree that the following testimony of C. E. Currier may be taken by E. R. Austin, as sole commissioner in said cause, and be sworn to before any notary public, subject to any objections as to the competency of the testimony.

N. J. & T. A. HAMMOND,
For Defts. as per Record.

ABBOTT & SMITH,
Solicitors for Plaintiff.

Direct Examination by Col. Hammond.

Q. How long have you been connected with the Atlanta National Bank, and in what capacity?

A. It will have been four years on the 10th of May, 1891, as cashier.

Q. When did Demetrius Jannopoulo first become a customer of the bank by depositing and drawing on it?

A. A short time previous to the sale of the Alabama & Georgia Manufacturing Company's mills by Fisher, receiver.

Q. What deposits did Jannopoulo make on June 30, 1890, and on January 2, 1891, in the Atlanta National Bank, and to whose credit was the money placed, his or the Huguley Mfg. Co's?

A. On June 30, 1890, a deposit of $3,000 was made, and on January 2, 1891, a deposit of $2,678.00, both to the credit of the Huguley Manufacturing Company.

Q. For what purpose were those deposits made?

A. For the purpose of paying matured interest on the first mortgage bonds on the Alabama and Georgia Manufacturing Co.

Q. Did the letters state the interest to which it was to be applied?

A. I am satisfied they did.

Q. If the bank paid out any of that money, state when and upon what paper it was paid?

A. They paid as per the checks in this account mentioned, which account and checks are hereto attached.

Q. What balance did they leave in the bank on Nov. 7, 1891?

A. It left a balance on Nov. 7, 1891, of $2,083.30.

Q. These checks corresponding with that account were drawn by whom?

A. They were drawn out by myself, the cashier, in payment of the coupons all except two which were drawn by Mr. Malone, one on Jan. 5, 1891, for $4.20, and the other on Jan. 8, 1891, for $289.80.

Q. Do these checks state truly for what they were drawn?

A. They do.

Q. Here is a letter attached to the check dated Sept. 22, 1890, for $315.60. The letter is signed Huguley Manufacturing Co., by M. S. Termenstein, secretary.
Was that check drawn pursuant to the order in this letter attached to it?

A. This was a balance remaining to their credit after those other checks were drawn, and after retaining $207 balance to

pay the remaining outstanding coupons due January, 1890, as stated in the letter of Sept. 19th, attached to the check, we remitted $315.60.

Q. On the check dated July 11, 1890, there is a memorandum, "Credit W. C. & L. Lanier." Who were they?

A. Bankers of West Point, Ga.

Q. Was it placed to their credit in your bank here?

A. The coupons came from them here to be paid and placed to their credit on the books of the Atlanta National Bank.

Q. Has the bank the letters and telegrams received from the Huguley Mfg. Co., Jannopoulo, or anyone representing it in St. Louis?

A. Yes, sir.

Q. They are all in the bank?

A. Yes, sir.

Q. Does the bank preserve the envelopes of its letters?

A. No, sir.

Q. In December, 1890, and January, 1891, how did the bank get its letters from the post office?

A. We have a box and the mail is taken from it by one of the employees early in the morning, and again about 10 o'clock, and again about 2.30 o'clock p. m.

Q. Who was the messenger the latter part of December, 1890, and the first part of January, 1891?

A. I think it was the colored porter.

Q. Who takes charge of the mail when it is brought in?

A. The corresponding clerk, Mr. D. B. DeSaussure.

Q. Is he with the bank now?

A. Yes, sir.

Q. Was the first day of January, 1891, a holiday?

A. Yes, sir.

Q. Do you know whether any mail was received Jan. 1, 1891?

A. The mail may have been brought into the bank, but remained unopened until the morning of the 2nd.

Q. Do you know in point of fact whether the letter from Jannopoulo was opened or not on Jan. 1st?

A. No, sir, I could not say positively; only that I did not see it until the 2d.

Q. What time of the 2d?

A. I could not say positively whether the morning or the evening.

Q. Do you know at what time that day you saw the newspaper publication in the *Constitution* that the coupons were to be paid at your bank?

A. No, sir.

Q. If you sent any dispatch to W. C. & L. Lanier on the 2d of January about paying coupons on these first mortgage bonds, state when you sent it, and what was the dispatch?

A. We telegraphed Lanier to pay the coupons and charge the amount to the Atlanta National Bank.

Q. Did you specify in your dispatch what coupons they were to pay?

A. I presume I did.

Q. If you sent any other dispatch or wrote any letter explaining that one ofterwards, state when you wrote or telegraphed, and what you said in that.

A. (See later.)

Q. When were any of those coupons due June, 1890, presented at your bank, not paid if any?

A. I do not remember that any were declined payment.

Q. Has your bank ever refused payment on any coupons presented?

A. No, sir.

Q. How long have W. C. & L. Lanier been the correspondents of your bank?

A. They have been our correspondents for West Point matters off and on since I have been in the bank.

(Direct examination suspended until papers can be produced, but by consent the cross examination proceeds as follows):

Cross Examination by Mr. Abbott.

Q. Was not the receiving of this letter enclosing the check to pay the interest falling due in January and July within your department as an officer in the bank?

A. Yes, sir.

Q. Is it not true that it was exclusively within your department to give direction about the application and use of this money?

A. Yes, sir.

Q. Are you not certain that the letter and the check for the sum of $2,678.00 from D. Jannopoulo, or the Huguley Mnfg Co. reached you for the first time on the 2d day of January, 1891?

A. Yes, sir.

Q. The bank did not have any money belonging to the parties previous to that time, to pay this particular interest did they?

A. No, sir.

Q. To go back to the payment of interest of July, 1890, which is the interest accruing January, 1890, and which had to be paid July 1st, 1890, is it not true that a good many of these coupons were paid in West Point by the Laniers?

A. Yes, sir.

Q. Is it not true that the check for $1,414.40 of date July 11, 1890, was for coupons paid by the Laniers at West Point *under the direction of your bank*, and was not that check to cover the amount so paid by them?

A. Yes, sir. It was reimbursing them for the amount so paid. I drew it and placed it to Laniers' credit.

Q. Did not the Laniers pay other coupons besides those inquired about in the last question?

A. Yes, sir.

Q. Please enumerate from those checks the amounts paid by the Laniers' besides the one mentioned above.

A. Dec. 24, 1890, $120.00; Jan. 15, 1891, $4.20.

Q. Where was the check of July 11, 1890, for $756.00 paid?

A. I do not know whether here or at West Point.

Q. Do you know that any of these items were paid here?

A. Yes, sir.

Q. Is it not true that the larger portion of these payments as exhibited by this account, on interest coupons, was made by the Laniers at West Point, on the request of the Atlanta National Bank?

A. I would have to figure to see which was the larger portion. There was a large amount though.

Q. What position does Mr. Paul Romare occupy in the Atlanta National Bank?

A. Vice president.

Q. Did he occupy that position in December, 1890, and January, 1891?

A. Yes, sir.

Q. What if anything has Mr. Romare to do with the general correspondence of the bank in the first instance?

A. Unless it is addressed to him or referred to him, the general correspondence comes to me.

Q. Had he anything to do with such correspondence as this mentioned enclosing checks to pay interest from Jannopoulo?

A. I do not think he ever *wrote a letter to them.*

Q. Do you know, as a fact when Mr. Romare first got information that this check $2678.00 was received.

A. It was not reported to him until the 2d of Jany., I do not remember the time of day.

Q. If this letter enclosing the check for 2678.00 had been received on the morning of the 31st day of December, 1890, state whether or not *in due course* the sender of that check would have received a credit for it on the books.

A. He would have received credit on the day we received it.

Q. Did this check get to the bank before the 2d of January?

A. It may have been received on the 1st of January, *but did not get into my hands.*

Q. *According to the course of doing business,* could it have been received on the 31st of December, 1890?

A. It could have gotten there on the evening of the 31st of December, and not been opened until the 2d of January, because the 1st of January was holiday. It is possible that it could have gotten there in *the evening*, but it did not get there in the *morning mail of the 31st of December, 1890.*

Q. According to the custom of doing business, is the mail received in the evening opened that evening?

A. No, sir.

Q. And if the next day is a holiday when is it opened?

A. It is not opened until the day after.

(Time having been allowed to produce certain papers, etc., the examination was resumed.)

Direct Examination by Col. Hammond.

Q. If you have found out what you telegraphed W. C. & L. Lanier about payment of coupons in January, 1891, state what you did telegraph, and the dates.

A. On Jan. 2d, 1891, I wired W. C. & L. Lanier at West Point as follows:—"Please pay January coupons of the Alabama & Georgia Manufacturing Co., and draw on us. Coupons attached." This telegram was sent under a misapprehension as to what coupons were to be paid, and when I discovered the error Jan. 3, 1891, I sent this telegram:—"My telegram of yesterday should read: Pay July coupons and interest; not January."

Q. How did you discover your error and when?

A. I believe Mr. Abbott or Mr. Romare told me about it.

Q. What connection had Mr. Abbott with bank?

A. He was their attorney.

Q. How long has he been their attorney?

A. Since my connection with the bank about four years.

Q. Had you or Mr. Romare charge of the coupons prior to Jan. 1, 1891?

A. I was acting under his instructions.

Q. How many of the bonds did the bank hold in its own right?

A. Four.

Q. Do you know what time of day on the 3rd you sent that dispatch?

A. *In the afternoon. After the bank was closed.*

Q. Did you write the paper attached, "Marked A," dated Jan. 26, 1891, and deliver the same to Mr. Jannopoulo?

A. Yes, sir.—I wrote it.

Q. I have shown you the coupons from 1—130 inclusive, due July 1, 1889, and now show you those from 1—130 due January 1, 1889, through each of which there is a cut. State whose the cut or stamp is, and why it was put there.

A. It is the cancelling stamp of the Atlanta National Bank. The purpose in cutting was that if lost and picked up they could not be collected.

Q. On each of these coupons there is a number in red ink. What does that indicate as to the bonds?

A. It indicates the number of the bond from which the coupon was clipped.

Q. While Fisher was receiver, your bank was his financial agent, and the business was done at the Atlanta National Bank, was it?

A. Yes, sir.

Q. Mr. Jannopoulo has attached to his interrogatories, which I have before me, copies of letters addressed to your bank as follows:

To P. Romare, dated June 27, 1890.
" " " July 10, 1890.
" " " Aug. 19, 1890.
" Atlanta Nat. Bank " Aug. 30, 1890.
" " " " " Sept. 19, 1890, from Termenstein
" " " " " Dec. 29, 1890, " "

a telegram of Jan. 4, 1891, to the Atlanta Nat. Bank; a letter of Jan. 22, 1891, to P. Romare, Vice Pres. Which of those letters are in the possession of the Atlanta National Bank? Attach the same to your answer.

A. I have made search and those hereto attached are all that can be found.

Q. Where are the envelopes of the letters?

A. They were destroyed.

Q. In your examination yesterday you spoke of W. C. & L. Lanier paying off certain coupons and sending them to you. Were they paid, or simply held by them as bearer, and sent to Atlanta to be paid?

A. I do not know whether they had bought or paid them.

Q. Was there any mark of cancellation on them until you received them?

A. No, sir.

Q. Had you not instructed them to pay all coupons and to send them to you?

A. Yes, sir.

Q. Is it not true when the bank here was paying off the coupons for Fisher, that they frequently took the coupons and held them until Fisher had money to pay?

A. I do not remember about that.

Cross Examination by Mr. Abbott.

Q. Did the Laniers have any instructions about paying the coupons for July, 1890, except in those telegrams?

A. No, sir.

Q. And in those telegrams he was instructed to pay, and not buy the coupons?

A. Yes, sir.

Q. Did you not correct the telegram of January 2d, 1891, as soon as you found out the mistake?

A. Yes, sir.

Q. Is it not true that Mr. Romare, and not myself called your attention to the mistake?

A. I do not remember who it was.

Q. You do not remember asking me about the details of those payments, do you?

A. No, sir.

Q. It would not be in my line of business as attorney for the bank to make suggestions to you concerning such matters, would it?

A. No, sir.

Q. Is your cancellation stamp on any of those coupons which you paid in January, 1891?

A. No, sir.

Q. How came you to give that certificate of January 26, 1891?

A. I did it at Mr. Jannopoulo's earnest request.

Q. Was the request made in person or by letter?

A. In person.

Q. That certificate states the truth, does it not?

A. Yes, sir.

Q. And you turned it over to Mr. Jannopoulo?

A. Yes, sir.

Q. In reference to the coupons paid during Fishers administration as receiver, do you know where those coupons were really paid?

A. No, sir.

Q. May not they, or a greater portion of them, have been paid in West Point by the Laniers, and the Laniers afterwards drawn on you for the amount to cover?

A. Yes, sir.

Q. Have you enough recollection about it to state how those Fisher coupons were paid?

A. No, sir. They came to us from various places. I think some through the Laniers, and perhaps some from the First National Bank of Newnan, Ga.

Q. Were not some paid in Newnan?

A. Perhaps so. Any one who understood that the coupons were *to be paid by the Atlanta National Bank would cash them.*

Re-direct Examination by Col. Hammond.

Q. Why did you not stamp coupons paid after the 2d of January, 1891?

A. Mr. Romare suggested that I should not do it.

Q. Where did the president of your bank live?

A. In New York.

Q. How long has he lived there?

A. For years past.

Q. Where was Mr. Jannopoulo when he asked you for this certificate of January 26, 1891?

A. In the Atlanta National Bank.

Q. Had he just come from West Point or was he going there?

A. I do not know.

Q. Does not the correspondence between your bank and W. C. & L. Lanier show whether they paid or whether they bought and sent to you to pay coupons which they sent?

A. It does not.

Q. So far as you know, did they ever pay without instructions from your bank?

A. I think they did on former occasion.

Q. What former occasions?

A. In 1889—the Fisher coupons.

Q. What makes you think they paid any one of the Fisher coupons?

A. I do not know it positively, but think so.

Q. Did not Fisher when receiver have an office at West Point, and have a young clerk there?

A. Yes, sir.

Q. Was not his office over W. C. & L. Lanier's, and not at the banking house of W. H. Huguley & Co.?

A. Yes, sir. It was over W. C. & L. Laniers.

Re-cross Examination by Mr. Abbott.

Q. Is it not the custom for the bank to shut up here on the first day of January of each year?

A. Yes, sir.

C. E. CURRIER, *Cashier.*

Sworn to and subscribed before me this 18th November 1891.

(SEAL) D. B. DESAUSSURE,
Notary Public, F. C. Ga.

GEORGIA, }
Fulton County. }

I, Edward R. Austin, acting as commissioner by consent in the above stated case do hereby certify that the foregoing is the evidence taken down by me, and that the papers hereto attached are those alluded to and testified about by the witness, to-wit: The account headed "Huguley Manufacturing Co., St. Louis, Mo., in account with the Atlanta National Bank," and the thirteen checks on said bank testified to by said Currier; together with said letter of M. S. Termenstein, secretary, attached to the check of September 22, 1890; and the envelope of six coupons attached to the check of December 24, 1890; a receipt of D. Jannopoulo attached to check of January 8, 1890; three coupons attached to check of February 2, 1891; and also a certificate of said Currier dated January 26, 1891; and letters of M. S. Termenstein, secretary of the Huguley Manufacturing Co., of the following dates: Aug. 19, 1890, addressed to P. Romare vice president; Aug. 30, 1890, addressed to the Atlanta National Bank; Sept. 2, 1890, to the Atlanta Nat. Bank; Sept. 12, 1890, to W. T. Huguley; and Dec. 29, 1890, to the Atlanta Nat. Bank.

This the 18th day of November, 1891.

EDWARD R. AUSTIN,
Commissioner.

James Swann,
President.

P. Romare,
Vice President.

C. E. Currier, *Cashier.*

THE ATLANTA NATIONAL BANK.

Atlanta, Ga., Nov. 7, 1891.

Huguley Mfg. Co., St. Louis, Mo.:—DEAR SIR—I en-

close statement of your account showing a balance of $2083.-30 due you; also 13 cancelled vouchers, amounting to $3594.70.

Please examine carefully and report at once whether correct or not. Respectfully,

C. E. CURRIER,
Cashier.

(1)

Atlanta, Ga., July 8, 1890. No. . . . . .

THE ATLANTA NATIONAL BANK

Pay to the order of 15 coupons Ala. & Ga. Mfg. Co. $300 three hundred dollars.

D. JANNOPOULO, *Treas.*
CURRIER.

Huguley Mfg Co.
Collection Dep't. Paid July 8, 1890. Atlanta National Bank.

(2)

Atlanta, Ga., July 11, 1890 No. . . . . .

THE ATLANTA NATIONAL BANK

Pay to the order of 37 coupons Ala. & Ga. Mfg Co. and int. $756.00 seven hundred and fifty-six dollars.

W. T. HUGULEY MFG CO.
Per C. E. CURRIER, *Cashier.*

Paid July 11, 1890, Atlanta National Bank, Atlanta, Ga.

(3)

Atlanta, Ga., July 11, 1890. No. . . . . .

THE ATLANTA NATIONAL BANK

Pay to the order of 68 coupons Ala. & Ga. Mfg Co. $1414.40 fourteen hundred and fourteen 40-100 dollars.

W. T. HUGULEY MFG CO.
C. E. CURRIER, *Cashier.*

Cr. W. C. & L. Lanier.

Atlanta National Bank, July 11. Paid. Receiving Teller.

St. Louis, Mo., Sept. 19th, 1890.

Atlanta National Bank, Atlanta, Ga.: GENTLEMEN—Your favor of the 16th inst. at hand and noted. In reply would say, in as much as I can not ascertain who holds the other 10 coupons due January 1, '90 of the late Ala. & Ga. Mfg Co., we will leave enough money with you to pay them off as they turn up, and you will please return the balance to us here. As I do not know how you figured the interest on the 120 coupons you already paid, you will please keep enough to cover the interest due on the remaining 10 coupons, and when presented to you and paid please return them to me.

Balance to our credit.....	$522	60
Ten coupons to be paid at $20.....	200	00
	322	60
Interest on $200.00 from Jan. 1 to July 1—6 months.....	.....	
Balance	.....	

Which please remit to us.

Yours respectfully,

HUGULEY MFG CO.
MARTIN S. TYRMENSTEIN,
Secretary.

Attachment to Check No. 5.

(4)

Atlanta, Ga., July 23, 1890. No. .....

THE ATLANTA NATIONAL BANK

Pay to the order of int. 10 coupons, 6 months ($7.00) seven dollars.

W. T. HUGULEY MFG. CO.
C. E. CURRIER, Cas.

L. & G. Banking & Trust for A. T. Dallis.
Collection Dep't. Paid July 23, 1890. Atlanta National Bank.

(5)

Atlanta, Ga., Sept. 22, 1890. No. . . . . .

THE ATLANTA NATIONAL BANK

Pay to the order of N. G. Exchange ($315.60) three hundred and fifteen 60-100 dollars.

HUGULEY MFG. CO.

CURRIER, *Cas.*

Collection Dep't. Paid Sept. 22, 1890. Atlanta National Bank.

(6)

Atlanta, Ga., Dec. 24, 1890. No. . . . . .

THE ATLANTA NATIONAL BANK

Pay to order of 6 Ala. & Ga. coupons, Lanier ($120) one hundred and twenty dollars.

HUGULEY MFG. CO.

CURRIER, *Cas.*

Atlanta National Bank. Dec. 26, 1890. Paid. Receiving Teller.

Received of the Atlanta National Bank thirty coupons $20.00 each of the Alabama & Georgia Mfg. Co., due January and July 1890, said coupons having been paid by the Atlanta National Bank for account of the Huguley Mfg. Co., of St. Louis, Mo., four of the coupons were due January 1st, 1890, the remainder July, 1890.

D. JANNOPOULO, *Prest.*

(7)

Atlanta, Ga., Jany. 5, 1891. No. . . . . .

THE ATLANTA NATIONAL BANK

Pay to W. C. & L. Lanier $4.20 four 20-100 dollars.

7 per cent interest on 6 mos. coupons Ala. & Ga. Mfg Co., due Jan., 1890.

Chg. ac. HUGULEY MF. CO.

C. M.

Atlanta National Bank. Paid Jany. 5, 1891. Receiving Teller.

(8)

Atlanta, Ga., Jany. 8, 1891. No. . . . . .

THE ATLANTA NATIONAL BANK

Pay to the order of 14 Ala. & Ga. Mfg. Co. coupons $289.-80, two hundred and eighty-nine and 80-100 dollars.

Chg. HUGULEY MFG. CO.

Atlanta National Bank, Jany. 8, 1891. Paid. Receiving Teller.

(9)

Atlanta, Ga., Jany. 14, 1891. No. . . . . .

ATLANTA NATIONAL BANK

Pay to the order of 8 coupons, due July, 1890, 20.00, $165.60, 6 mos. interest on same 560 dollars.

Chg. ac. HUGULEY MFG. CO.

Atlanta National Bank. Paid Jany. 14, 1891. Receiving Teller.

(10)

Atlanta, Ga., Jany. 22, 1891. No. . . . . .

THE ATLANTA NATIONAL BANK

Pay to order of 4 Jany., 1890, coupons $80, eighty dollars.

HUGULEY MFG. CO.

CURRIER.

Collecting Dep't. Paid Jany. 23, 1891. Atlanta National Bank.

(11)

Atlanta, Ga., Jany. 23, 1891. No. . . . . .

THE ATLANTA NATIONAL BANK

Pay to the order of 4 July, 1890, coupons Ala. & Ga. $, eighty dollars.

HUGULEY MFG. CO.

CURRIER.

Collecting Dep't. Paid Jany. 23, 1891. Atlanta National Bank.

(12)

Atlanta, Ga., Feby. 2, 1891. No. . . . . .

THE ATLANTA NATIONAL BANK

Pay to the order of 3 July coupons Ala. & Ga., $60.

W. H. HUGULEY MFG CO.
CURRIER.

Paid Feby. 2, 1891. Atlanta National Bank, Atlanta, Ga.

Paid 2.10 and charged taken after that date.

(13)

Atlanta, Ga., 2-16. 1891. No. . . . . .

THE ATLANTA NATIONAL BANK

Pay to the order of int. on coupons Feby. 2, $2.10.

Charge W. H. HUGULEY MFG CO.

Paid Feby. 16, 1891. Atlanta National Bank, Atlanta, Ga.

Huguley Mfg Co., St. Louis, Mo., in account with The Atlanta National Bank.

Date.			Dr.	Cr.
1890.				
June	30	Dept.		$3,000 00
1891.				
Jan.	2	"		2,678 00

			Checks.	
			$ 300 00	
			4 20	
			1,414 40	
			756 00	
			7 00	
			315 60	
			120 00	
			2 10	
			60 00	
			289 80	
			80 00	
			80 00	
			165 60	
		Balance	2,083 30	
			$5,678 00	$5,678 00
Nov.	7	Balance		$2,083 30

Atlanta, Ga., Jany. 26, 1891.

THE ATLANTA NATIONAL BANK

This is to certify that $26 78 .00 was received by us Jany. 2, 1891, and placed to credit of the Huguley Mfg Co., with instructions to pay the July, 1890, coupons and interest of the Ala. & Ga. Mfg Co., when presented. We also on the same date notified Messrs. W. C. & L. Lanier to pay all coupons presented to them and charge to our acct.

C. E. CURRIER, *Cashier.*

St. Louis, Mo., Aug. 19th, 1890.

Paul Romare Vice Prest. Atlanta National Bank, Atlanta, Ga., DEAR SIR — On June 27th we sent you a New York exchange for $3000.00 to pay coupons on first mortgage bonds Ala. & Ga. Mfg Co. due Jan. 1, 1890, and we suppose they have all been presented by this time.

Please return all paid coupons to us here, and send us New York exchange for the balance due us. Obliging yours truly,

HUGULEY MFG CO.,

M. S. TERMENSTEIN, *Secretary.*

St. Louis, Mo., Aug. 30th, 1890.

Atlanta National Bank, Atlanta, Ga., GENTLEMEN:—

On July 10 and Aug. 19th we wrote you asking whether you had paid all the coupons for which we send you June 17th New York exchange for $3000 which more than covered the amount necessary.

At this writing we are without an answer to either of the above letters.

Please let us know by return of mail how much you have paid on this, and if all, send us balance here, as requested before.

Yours very respectfully,

HUGULEY MANUFACTURING CO.,

MARTIN S. TERMENSTEIN, Secty.

St. Louis, Mo., Sept. 2nd, 1890.

Atlanta National Bank, Atlanta, Ga., GENTLEMEN:—

Your N-M of yesterday at hand and noted. I called on

the Adams Express Co. here, and found the package of coupons sent by you on the 22nd, but owing to you spelling my name wrong they could not locate me, however, all is well now.

Thanks for your attention. Yours respectfully,

HUGULEY MFG. CO.
MARTIN S. TERMENSTEIN, *Secy.*

St. Louis, Mo., Sept. 12th, 1890.

W. T. Hugulley, Esq., West Point, Ga., DEAR SIR: —

The Atlanta National Bank has sent me 120 paid coupons of the Ala. & Ga. Co. bonds amounting to $2,400.00
Interest on same 77.40

They paid 120 coupons and as I figure there are 10 more to be paid. Perhaps you can tell me who holds them and notify the parties to present them at Atlanta National Bank for payment, so I can withdraw my balance with the bank.

They paid68 coupons to unknown—
20 " " W. D. Denson—
17 " " W. T. Huguley—
15 " " La Grange Bakg & Trust Co.

The bank holds $522.60 in our favor and I would like to have this matter closed. Please notify holders if possible and oblige,

Yours faithfully,
MARTIN S. TIRMSTEIN, *Secy.*

St. Louis, Mo., Dec. 29, '90.

Atlanta National Bank, Atlanta, Ga., GENTLEMEN: —

Enclosed we hand you New York exchange No. 254,377 for $2,678, two thousand six hundred and seventy-eight dollars which place to the Cr. of the Huguley Mfg. Co., and pay coupons due July 1st, 90, of the first mortgage bonds of the Ala. & Ga. Mfg. Co. amounting to $2,600 together with the interest on same $78 total $2,678 and return coupons as paid to us. We have inserted notice in the *Constitution* of your city that the coupons are payable at your bank on presentation. Please honor and acknowledge receipt hereof.

Yours respectfully,
HUGULEY MFG. CO.
Martin S. Tirmenstein, Secy.

United States of America, Northern District of Georgia. In the Circuit Court of the United States for the Northern District of Georgia.

To Isaac Hardeman, C. A. Turner:

Whereas, There is a certain matter in controversy now pending and to be tried in the said Circuit Court, between J. J. Robinson, Trustee, vs. Alabama & Georgia Manufacturing Company et al.

And Whereas, Logan Owens is a material witness in said suit on behalf of the defendant and can not attend said Circuit Court in person without manifest inconvenience:

Now Know Ye, That reposing special trust and confidence in your prudence and fidelity, you are hereby appointed, and you, or any two or more of you, are hereby authorized and required to cause the said Logan Owens personally to come before you, and after being duly sworn, to examine him concerning the said suit, agreeably to the interrogatories hereunto attached; and the answers to the same being plainly and distinctly written, you are to send the same, together with this writ, closed up under your hands and seals, to the clerk of said court, at Atlanta, Ga., to the court now in session.

Witness, The Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 28 day of December, 1891.

(SEAL) O. C. FULLER, *Clerk.*

Bill for foreclosure. In Circuit Court of U. S. for Northern District of Georgia.

J. J. ROBINSON, TRUSTEE,
versus
THE ALABAMA AND GEORGIA MANUFACTURING COMPANY, ET AL.

Interrogatories to be answered by Logan Owens, a witness material for said defendant and who resides out of said district to wit in Macon, Ga.

1. Do you know the parties?

2. At what business are you now engaged? If you have any connection with milling and especially cot-

ton mills state when and where and in what capacities and how familiar you are with the operation, value, etc.?

3. What connection have you had with the Ala. & Ga. Mfg Co., below West Point, Ga., and when and in what capacities? What if any improvements have been put upon said property or to or on the machinery since the 8th of January, 1890, and by whom?

4. What is the condition of said property now or when you last saw it (giving that date) as compared with its condition on the 8th of January, 1890? If worse how much worse, if better how much better measured in dollars?

5. Relate anything else beneficial to defendant on those subjects.

N. J. & T. A. HAMMOND,
D.'ts. Attorney.

Service acknowledged and copy waived. Let a commission issue without order of court.

Dec. 24, 1891.

ABBOTT & SMITH,
DORSEY, BREWSTER & HOWELL,
Sols. for Plff.

Filing—Filed in clerk's office 28 day of Dec., 1891.

O. C. FULLER, *Clerk.*

Cross Interrogatories.

First—State particularly what improvements have been added to the machinery of the mill since it was sold by Fisher, receiver, or since the Huguley Mfg Co. has been running it? If any new machinery has been added describe it particularly, and the value of each piece of such new machinery? If any repairs or additions have been added to the old machinery describe such and the value of such repairs—state each item separately.

Second—State how and in what manner the property of the said factory company has been taken care of since it passed out of the hands of the Ala. & Ga. Mfg Co.? Answer both as to realty and personalty? State fully.

Third—If you as superintendent of said company (that is Huguley Mfg Co.) ever called the attention of the officers of the company to any needs of the mill in the way of addi-

tions to the machinery and findings for same state when and how often, and whether or not you made requisition for the same, and whether such requisition was filled? State fully.

Fourth—State all that you know that shows that said property in the hands of said Huguley Mfg Co. not been properly kept in repairs since it has had it in possession? Have you done so, and not as valuable as it was when it passed into the possession of said Huguley Mfg Co.? State all you know that will benefit the plaintiff.

ABBOTT & SMITH,
DORSEY, BREWSTER & HOWELL,
N. D. DENSON,

Solicitors for Plaintiff.

Bill for Foreclosure. In Circuit Court of U. S. for Northern District of Georgia.

J. J. ROBINSON, TRUSTEE,
versus
ALABAMA & GEORGIA MANUFACTURING COMPANY ET AL.

STATE OF GEORGIA,
County. of Bibb.

By virtue of a commission issuing out of the Honorable Circuit Court of the United States for the Northern District of Georgia, to us directed, we have caused Logan Owens, the witness in said commission named, to come before us, and being duly sworn, true answers to make to the interrogatories to said commission annexed, deposes and answers as follows:

To the first interrogatory he answers.

I do not know the plaintiff J. J. Robinson. I know the Alabama & Georgia Manufacturing Company.

To the second interrogatory he answers.

I am at this time superintendent of the Bibb Manufacturing Company. I was with the Alabama & Georgia Mills for about ten years. I was foreman in the carding department in the mills located below West Point, Georgia, on the Alabama side. I also worked for the West Point Mills about four years, as foreman in the carding and spinning department. I have also been superintendent of the Huguley Manufacturing Company about one year. All of the

above cotton mills. I have made cotton mill business my work for thirty years and am familiar with the working of all machinery commonly connected with cotton mills and am also familiar with the value of the same.

To the third interrogatory he answers.

I worked as foreman in the carding department of these mills as near as I can remember from 1871 until 1880. I was superintendent of the same mills from July, 1890, to September, 1891.

There were improvements put upon the premises, upon the factory building and upon the machinery. The old operative houses were repaired, new houses built, the roof of the factory building repaired, parts of new machinery bought, the factory floor underpinned, new floor put in cloth room and new water house put in. Mr. Higginbotham looked after all outside repairs, putting in water house, underpinning floors, repairs on roofs. I put in the repairs on machinery and did all work relating to it. All the above was done since January 8th 1890.

To the fourth interrogatory he answers.

The condition of this property when I last saw it, which was in the latter part of August 1891, as compared with its condition on the 8th of January, 1890, was much better, in my opinion at least seventy-five per cent possibly one hundred per cent better. The repairs and improvements put in by Higginbotham and myself would amount to about fifteen thousand dollars.

To the fifth interrogatory he answers.

I know nothing further to relate.

To the first X interrogatory he answers.

The following improvements have been added since the sale of Fisher receiver, and the price of the same.

One hundred spinning rollers from Morten, Reed & Co., of Baltimore, twenty dollars; one hundred spooler spindles from Riley Gray, Boston, fifty dollars; one hundred collars for same $22.00 five pounds glass steps for spinning $16.25; thirteen twist gear $12.60; 65 pounds castings for speeder $3.90; twelve yarn beams $96.00 two sets card clothing $343.20, one hundred and ten flyers for speeders $162.80, eighteen 7 inch flyers $20.70, twenty-six spinning rings

$6.50, one bill assorted repair work bought of West Point Iron Works $126.05, one bill from R. D. Cole Mfg Co., Newnan, Geo., $100.00, twenty-four flyers $27.60, twelve flyers $22.20. New pieces for cards and speeders $243.40, eighteen rollers for drawing $24.30, four gear $13.00, eighteen picker shafts $22.50, twelve picker shafts $15.00, five hundred and twenty-three stirrups $13.07, twelve crown wheels $39.00, forty-two pounds casting $4.20, thirty-two finished gear wheels $60.00, four spinning cylinders $194.-00, sixteen sets card clothing $1699.02, one copper cylinder $17.00, one bill assorted castings and gear from Bridesberg $143.80.

The old operative houses and fences repaired and two new ones built $1,000.00. Repairing roof on mill $150.00. Underpinning factory and new waterhouse $1,000.00. Cloth room floor $250.00. Repairing dam $100.00.

To the second X. interrogatory he answers.

The property was taken good care of during my time there since the sale by the receiver. All repairs were made to buildings and fences that were necessary. Some findings to machinery were not added because they were not supplied, otherwise the machinery was left in good condition. Guards were placed for the purpose of protecting the mill property from fire, tresspassers, &c. I speak only of the time I was there. The fire pumps were all kept in good order.

To the third X. interrogatory he answers.

I have called the Huguley Mfg Co.'s attention for supplies needed, probably two or three times; they were not furnished. I made requisition for the same but it was not filled. I made the demand for the supplies on Mr. B. F. Gamble of Baltimore, and Mr. D. J. Jannopoulo, of St. Louis, Mo. These are the only persons connected with the Huguley Mfg Co., that I made demand upon or requisition for supplies and which was always in writing or by letter.

To the fourth X. interrogatory he answers.

The property has been taken proper care of since it went into the hands of Huguley Mfg Co. during the time I was there, and the same kept in proper repair and its

value greatly added to as stated in my answer to direct interrogatories. I know nothing more to benefit plaintiff.

LOGAN OWENS.

Answered, sworn to and subscribed before us this 4th day of January, 1892.

(L. S.) ISAAC HARDEMAN,
Commissioner.

(L. S.) C. A. TURNER,
Commissioner

In the Circuit Court of the United States for the Northern District of Georgia.

UNITED STATES OF AMERICA,
Northern District of Georgia.

To Horton Pope, W. Palmer Clarkson:

Whereas, There is a certain matter in controversy now pending and to be tried in the said Circuit Court, between J. J. Robinson, trustee, and Alabama & Georgia Manufacturing Company and others.

And Whereas, Demetrius Jannopoulo and John C. Orrick are material witnesses in said suit on behalf of the defendants and can not attend said Circuit Court in person without manifest inconvenience.

Now Know Ye, That reposing special trust and confidence in your prudence and fidelity, you are hereby appointed, and you, or any two or more of you, are hereby authorized and required to cause the said Demetrius Jannopoulo and John C. Orrick personally to come before you, and after being duly sworn, to examine them concerning the said suit, agreeably to the interrogatories hereunto attached; and the answers to the same being plainly and distinctly written, you are to send the same, together with this writ, closed up under your hands and seals, to the clerk of said court, at Atlanta, Ga., on or before the first Monday in November, 1891.

Witness, the Honoral le Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 5th day of October, 1891.

(SEAL) O. C. FULLER, *Clerk.*

Bill to Foreclose Mortgage. United States Circuit Court Northern District of Georgia.

J. J. ROBINSON, TRUSTEE,
versus
ALABAMA & GEORGIA MANUFACTURING COMPANY ET AL.

Interrogatories to be answered by Demetrius Jannopoulo and John C. Orrick, witnesses material for said defendants, who reside out of said State, to wit, at St. Louis, Missouri.

1. Do you know the parties?

2. What connection have each of you had with the Alabama & Georgia Manufacturing Co. and the Huguley Manufacturing Co? What interest had either of you in the purchase of the property at the sale of Fisher receiver, and what interest have each of you held therein since?

3. If interest on the coupons of the Alabama & Georgia Manufacturing Co. has been paid by either of you, state when, where, and upon what kind of notice, and when such interest was due and payable?

4. What connection had D. Jannopoulo with the Atlanta National Bank as customer or otherwise, before and since said purchase?

5. If any offer was made by anyone to pay any other interest on the bonds of the Alabama & Georgia Manufacturing Co. which was not accepted, state by whom such offer was made, in what form, and all the facts and circumstances connected therewith, to show whether there was or was not a offer to have the same paid according to the contract. If any money was deposited, say by whom, how much, when, and where, and what became of said money.

6. If any letters were written to any persons connected with the matter of such payment or offer to pay, state to whom they were written, by whom, and when, and where, and when mailed, and how long at that time in the regular course of mail it took for such letters to be delivered and if you can measure by any other letters do that also.

7. If there was a refusal to accept interest, state who refused, so far as you can, and if either of such persons had any conversation with you or either of you touching

their refusal, state who they were, when the conversation occurred, and what was said by each.

8. If either of you had any conversation or did anything with an officer of the Atlanta National Bank concerning such payment of interest state when and where and what was said and done at the time.

9. If since January, 1891, any offer was made to pay any interest on said bonds, state what offer, and by whom, and what was its success, so far as you are advised. Relate anything else you know to benefit the defendants.

N. J. & T. A. HAMMOND,
JOHN C. ORRICK,
Attys. for said Corporation Defts.

Oct. 10, 1891.

Messrs N. J. & T. A. Hammond, City, DEAR SIRS:— If your client will admit that W. T. Huguley has such interest and had at the time of the filing of this bill in the property covered by the mtg and sought to be foreclosed in case of Robinson, trustee vs. Ala. & Ga. Mfg Co. et al. as that said Huguley is properly made a defendant to said bill, then D. Jannopoulo and Jno. C. Orrick are hereby relieved from answering any cross intgs, and producing papers to establish the fact that said Huguley had such interest.

A failure to answer the cross intgs shall be held to be a waiver on part of dfts to insert on the defence that said Huguley was improperly joined as a defendant, and that the plff shall be relieved from bringing forward any evidence to establish the fact of said Huguley's interest.

This proposition to remain open for 10 days, in the mean time you are let us know in writing whether you accept or not.

DORSEY, BREWSTER & HOWELL,
ABBOTT & SMITH,
Solicitors for Plaintiff.

The terms of the above proposition are hereby accepted.

N. J. & T. A. HAMMOND,
JNO. C. ORRICK,
Attys. for Huguley Mfg. Co.

Cross Intgs. for Jno. C. Orrick

1—Were you not present at the sale of the property of the Ala. & Ga. Mfg Co., at Hamilton, Ga., on the first Tuesday in Jany, 1890, by H. C. Fisher, receiver? Did you not bid off the property in connection with Col. Chilton and Malcom Graham? Did you not bid off the property for D. Jannopoulo, J. F. Plummer & Co., the Western National Bank and W. H. Huguley & Co., or W. T. Huguley? State particularly what they each had present remote or contingent.

2—What contract or contracts were made between the parties named prior to said sale or at the time of the sale or since that time in reference to the property sold. Was it not stipulated in the contract inquired about that W. H. Huguley & Co., or W. T. Huguley should be interested in the sale and purchase of the property?

3—What contract or contracts were made between said Huguley & Co. and D. Jannopoulo in the month of Dec., 1889, in reference to the property above inquired about? Where is that contract or contracts now? In whose possession, custody or control are these contracts now?

Give the contents of such contracts, if you can not remember the exact language employed in each, give the substance of the same? Have you done so?

4.—What other contract or contracts were entered into between said Huguley & Co., Jno. F. Plummer & Co., the Western National Bank of N. Y. and D. Jannopoulo or any other persons for them and on their behalf in reference to the title control or management of the property?

State the contents of all such contracts. If you can not state the exact language of each, state the substance of such contract or contracts.

If you have such contract or contracts as are inquired about in this or any of the preceding intgs attach same to your answer. If you have not the originals attach copies to your answer and say whether or not the same are true copies? Have you done so?

5—Who are the stockholders in the Huguley Mfg Co.? What interest in said company has W. H. Huguley & Co., or W. T. Huguley? And how is that interest repre-

sented or evidenced? State the interest each of them has present remote or contingent and what each had when this bill was *filed in* cause above stated.

6—For whom were you trustee in the bidding off the property mentioned in the foregoing intgs.?

For whom was Mr. Chilton acting in the transaction inquired about? Why was it not stated who the beneficiaries were? Why was he put down as trustee without more? For whom was Malcom Graham Esq. trustee or agent in the transaction?

Is it not true that a contract or agreement was entered into between said parties or some of them in writing, and that on the 9 Jany., 1890, a confirmation or ratification of the same was entered into in words as follows: to wit:

GEORGIA,)
Fulton County.)

For and in consideration of the sum of one dollar I do ratify and confirm the foregoing instrument subject to existing contract between us and D. Jannopoulo, dated 18 Dec., 1889, and between us and Jno. F. Plummer & Co., dated Dec. 16, 1889. This 9 Jany., 1890.

Signed. W. H. HUGULEY.

In presence of
T. H. WHITAKER.
W. M. SCOTT, N. P.

Where are the contracts of Dec. 16, '89, and Dec. 18, '89, above inquired about?

Have you these contracts or either of them? If you have not the original have you copy or copies? If so please attach to your answer?

If you have not the originals or copies—please state the contents? Have you done so?

7.—If you say that Huguley & Co., nor W. T. Huguley had no interest in the property purchased why was it necessary to have them sign said confirmation or ratification above copied?

State the reason fully?

8.—State fully what interest said W. T. Huguley had in the property sold at that time and what interest he was to thereafter acquire and in what manner or way he was to acquire it.

9.—State any and all facts within your knowledge going to show that said Huguley or Huguley & Co., then had or was to have in said property sold—and what was the character of the interest. If it was contingent what was the contingency which was to occur before the interest vested. State fully. Have you done so?

10.—State all you know that will benefit the plaintiff as fully as if interrogated thereto.

11.—The foregoing questions as to the interest of said W. T. Huguley have relation to the time the bill was filed in this case as well as to the other time inquired about. Answer all of said questions fully as to his interest at the time this bill was filed.

Have you done so?

12.—Did W. T. Huguley or W. H. Huguley & Co., have any sort of interest in said property at the time said bill was filed and was it understood that such interest was to be held in his or their own name or in the name of some one for them or him?

Have you stated all you know as to the interest of said Huguley or Huguley & Co., in said property at the time inquired about?

DORSEY, BREWSTER & HOWELL,
N. D. DENSON,
ABBOTT & SMITH,

Sols. for Plff.

Cross Interrogatories for Demetrious Jannopoulo.

1st cross interrogatory:

The interest you hold in the property formerly belonging to the Alabama & Georgia Manufacturing Company is in writing is it not? When this property was sold by the receiver, H. C. Fisher, who became purchaser or purchasers? Was this purchase made under and by virtue of a written contract to which you were a party? Who was the bidder and bid the price at which this property was sold? For whom did such purchasers make the bid. Who did such person represent? Have you the contract under which this purchase was made, if so attach it to your answer? If you hav'nt the contract where is it; in whose possession, custody and control? Please state the terms

of that contract. Who besides yourself was interested in the purchase of that property. Give the name of each person and corporation who were interested in the property that was purchased at that sale, or who become interested, and the interest of each under same.

2nd cross interrogatory:

What had Jno. C. Orrick to do with the purchase of this property at the sale on the first Tuesday in January, 1890? Was he not representative and trustee of yourself and Plummer and Company of New York? Who did Malcoum Graham represent in that contract? Is it not true that he represented the Western National Bank of New York? And does not the contract so state? Who did Col. Chilton, an attorney, represent in that purchase? In the contract it is stated, is it not, that he is a trustee? For whom is he trustee; and why was the cestui que trust left out as to him? Why was it provided that N. J. Hammond should name his successor in case he should die? What interest had Hammond in it; why should he name the successor to Chilton? For who was he acting; that is whom was he representing in naming such successor? What interest did W. H. Huguley or W. H. Huguley & Co., have under and by virtue of the contract under which this property was purchased? Is it not true that Chilton represented W. H. Huguley & Co., and was trustee for them in that contract? If you say you have not got the original contract to which reference has been made, have you got a copy of it? If you have attach such copy to your answers, or a copy of it. State whether you have done so or not?

3rd cross interrogatory:

If you say W. H. Huguley & Co. had no interest in this purchase then why was this confirmation and ratification made by W. H. Huguley & Co., in the following words:

"State of Georgia,
Fulton County."

"For and in consideration of the sum of one dollar I do ratify and confirm the foregoing instrument subject to the existing contract between us and D. Jannopoulo dated 18th day of December, 1889, between us, Jno. F. Plummer and Company

dated December 16th, 1889. This 9th day of January, 1890.

Signed W. H. HUGULEY."

In presence of

T. H. WHITTAKER,

W. M. SCOTT, N. P.

4th cross interrogatory:

Have you the contract made between yourself and W. H. Huguley & Co.?

If you have the original attach it to your answers to the interrogatories. If you haven't got the original have you got a copy. If you have attach copy to these interrogatories. Have you done so. If you have not state why not? In asking for a copy of this contract I mean the contract mentioned in the above ratification. If you haven't a copy of the original nor a copy, please state where the original is; in whose possession, custody or control is it? What was the contents of said contract; state fully?

5th cross interrogatory:

Have you got the original contract between Huguley & Co. and John F. Plummer and Company? If you have not got the original have you a copy? That is the contract mentioned in this ratification dated 16th day of December, 1889. If you have the original attach it to your answers to these interrogatories. If you haven't the original, but a copy, attach the copy. If you have neither then where is the original in whose possession, custody or control? What were the terms of said contract, give them in full?

6th interrogatory:

What interest has W. H. Huguley and Co. in the property purchased at said receiver's sale, and now held by the W. H. Huguley Manufacturing Company, now or heretofore? Is it not true that W. H. Huguley and Company have the right to own, control and manage said property on the repayment of money expended by yourself and other parties? If he has not got that right now, did he not have it under the contracts heretofore mentioned? If he has not got it now, when did he cease to have that right?

7th interrogatory:

If there are any other contracts existing between you and W. H. Huguley or between the W. H. Huguley Manufacturing Company and W. H. Huguley and Company, or between anybody in reference to this property under and by which W. H. Huguley and Company have had, or now have, or will have any interest therein please attach it to your answers to these interrogatories? Have you done so? If not why have you not? If any such contracts exist and you have not got the original and have copies, attach copies? If you haven't copies then state the contents of such contracts?

8th interrogatory:

Were not all the contracts made in duplicate and W. H. Huguley and Company or W. T. Huguley received one of the copies or duplicates? Have you received any letters from W. H. Huguley and Company, or W. T. Huguley in reference to these contracts, or in reference to an interest which they have or claim in connection with this property or any one else for them? If you have where they? Attach same to your answers to these interrogatories? What is the name of the present corporation operating this property ? Who are the stockholders in this corporation; and the amount of stock owned by each, and when each acquired his stock and how? What is the amount of the capital stock? Has it ever been issued; and is it now held as security or hypothecated; who holds it and for what? Who are the officers and directors of the W. H. Huguley Manufacturing Company, or this new corporation, and who has been during the time and since it was first organized?

9th interrogatory:

If you say you ever paid any interest coupons of the Alabama and Georgia Manufacturing Company's bonds since the property was sold by the receiver, were the coupons marked paid and cancelled, or do you now hold them as bearer. Some of these were paid in Atlanta by the Atlanta National Bank, or through the Atlanta National Bank, and some at West Point were they not, through W. C. & L. Lanier? How do you know this? Have you ever paid any of them yourself and if any of them have been paid they were paid through other persons? Is it not true that you do

not know where they were paid, or when they were paid? Was there any money in the city of West Point at W. H. Huguley's & Company's office, or at the office of the Alabama and Georgia Manufacturing Company or at the bank of W. C. & L. Lanier or any other place in said city for the payment of those coupons falling due July 1st, 1890, or on the 31st, day of December, 1890, or on the first of January, 1891? Now, Mr. Jannopoulo is it not true, and don't you know it, that there was not one dollar at any place in the city of West Point in the month of December, 1890, and in the month of January, 1891, placed there by anybody for the payment of the coupons falling due in January, 1891?

10—State any and all facts you may know going to show that said Huguley & Co., or W. T. Huguley had any interest at the time of the filing of this bill in said property covered by plaintiffs mortgage, and what the interest was, whether present, remote or contingent and how the same was held, whether in their or his own name or names or in the name of some other person.

Have you in good faith and to the best of your knowledge and ability answered this last and the other cross intgs?

DORSEY, BREWSTER & HOWELL,
ABBOTT & SMITH,
N. D. DENSON,
Sols. for Plff.

Bill to Foreclose Mortgage.

United States Circuit Court, Northern District of Georgia.

J. J. Robinson, Trustee,
versus
The Alabama & Georgia Manu
facturing Company et al.

State of Missouri,
City of St. Louis.

By virtue of a commission issuing out of the Honorable Circuit Court of the United States for the Northern District of Georgia, to us directed, we have caused Demetrius Jannopoulo and John C. Orrick, witnesses in said com-

mission named, to come before us, and being duly sworn true answers to make to the interrogatories to said commission annexed, depose and answer as follows: D. Jannopoulo. In answer to the first interrogatory, he states:

I know the parties.

In answer to the second interrogatory he states:

I never had any connection with the Alabama & Georgia Manufacturing Co. I am the president of the Huguley Manufacturing Co., have been such for more than a year. I had no interest in the purchase of the property at the sale of Fisher, receiver. I advanced some money, however, to aid in the purchase of the property at this sale. Since the sale by Fisher, and the incorporation of the Huguley Manufacturing Company. I have been interested as a stockholder in the Huguley Manufacturing Co., and am now and have been for more than a year last past president of the company.

In answer to the third interrogatory he states:

On the 27th day of June, 1890, I addressed a letter to Paul Romare, vice president of the Atlanta National Bank, Georgia, in regard to the payment of overdue coupons, on first mortgage bonds of the Atlanta & Georgia Manufacturing Co., due January 1st, 1890, and in that letter I enclosed New York exchange No. 74142, for three thousand dollars, to be placed by said bank to the credit of the Huguley Manufacturing Co., with instructions to the bank to pay on presentation said over due coupons, and requested the bank to insert a notice in the Atlanta Constitution that those coupons would be paid at their bank on presentation. The original of this letter is not in my possession and should be in the possession of the Atlanta National Bank. I herewith file copy of said letter marked "Exhibit A."

Pursuant to my request, a notice was duly published in the Atlanta Constitution, notifying all holders of bonds or coupons that the latter would be paid at the Atlanta National Bank on presentation. I was advised at that time that the Alabama & Georgia Manufacturing Co. had ceased to do business, having been sold out by receiver, and had no office in West Point, and I ascertained that pending the receivership the coupons on those bonds of the Alabama & Georgia Manufacturing Co. had been paid to the bondholders at the Atlanta National Bank at Atlanta, and that all the holders

acquiesced in the selection of the Atlanta National Bank as a place at which they were willing to receive the money. Under these circumstances I was advised by my counsel, Mr. John C. Orrick, to continue the Atlanta National Bank as the place at which the coupons should be paid. At the same time the Huguley Manufacturing Co. made the Atlanta National Bank its banker, and sent to them the signatures of the president and secretary, as appears by the letter of June 27th, 1890, the amount deposited being several hundred dollars in excess of the amount due on the coupons. On July 10th, 1890, I caused to be sent a letter to Paul Romary, vice president Atlanta National Bank, requesting him to report the amount of coupons of the Alabama & Georgia Manufacturing Co. bonds that had been paid. The original of this letter is not in my possession or control, but I herewith attach a copy of the same, marked "Exhibit B."

In reply to this letter I received a letter from C. E. Currier, cashier, dated July 14th, 1890, addressed to me, which I herewith file as an exhibit, marked "Exhibit C."

On August 19th, 1890, our company, through Mr. Tirmenstein, secretary, addressed and sent a letter of that date to Paul Romary, vice president Atlanta National Bank, requesting information as to payment of coupons due January 1st, 1890, and requesting return of the paid coupons to our office here. The original of this letter is not in our possession or control, and I herewith attach a copy of same as an exhibit hereto, marked "Exhibit D."

Receiving no reply from Mr. Romary to this letter, on August 30th, 1890, we addressed a letter to the Atlanta National Bank, calling attention to our letters of July 10th and August 19th, for information, etc. This letter is not in our control or possession, and I attach herewith copy of same as an exhibit, marked "Exhibit E."

I herewith file also letter from Atlanta National Bank dated September 16th, 1890, informing us of the number of coupons that were still outstanding. On September 19th, 1890, we addressed and sent a letter, the original of which is not in our possession and control, but a true copy thereof I herewith attach as an exhibit to my deposition, marked "Exhibit F."

On September 22, 1890, our secretary, Mr. Tirmenstein

received a letter from C. E. Currier, cashier Atlanta National Bank, enclosing to us their New York check for 315.60, being balance to our credit, after retaining 207 dollars, sufficient to pay twenty coupons and interest for six months, which had not been presented; all the rest of the coupons covering the interest due January 1st, 1890, on all the bonds of the Alabama & Georgia Manufacturing Co. was paid by us at the Atlanta National Bank, pursuant to the notice I have mentioned, published in the Atlanta Constitution. The coupons were presented there and were paid on our request at the said bank. I herewith file said letter of September 22nd, 1890, of C. E Currier, cashier, as an exhibit to be attached to my deposition as in case of all the other letters. Which letter is marked Exhibit "G."

No one of the bondholders at any time made any complaint to us or objected to the acceptance of payment of these coupons at the Atlanta National Bank, and we have never been advised by the Atlanta National Bank that there was any objection to the place we had designated for payment. So subsequently, when we were providing for the payment of the coupons to be paid January 1st, 1891, on these bonds, we repeated substantially what we had done before, by sending the money to the Atlanta National Bank, and causing notice to be inserted in the Atlanta Constitution advising all coupon holders that their coupons would be paid upon presentation at said bank. I have not in my possession the original of this notice in the Atlanta Constitution, but they were inserted and published in said paper. In making such provision for payment of said coupons, on the 29th day of December, 1890, I directed our Secretary Martin S. Ternenstein to forward to said Atlanta National Bank on that date, $2,678.00 represented by New York Exchange No. 254,377, to be placed by it to the credit of the Huguley Manufacturing Company, with direction to pay all coupons on bonds of Alabama & Georgia Manufacturing Company, due July 1st, 1890, together with interest thereon, and return the coupons as paid, advising it that notice to this effect would be inserted in the Atlanta Constitution The original of this letter is not in our possession or control but I herewith present and file as an exhibit, copy of same

marked "Exhibit H." This letter enclosing said draft was mailed here in St. Louis to said bank on the afternoon of December 29th, 1890. The mail train on which this letter would in due course have gone, left St. Louis for Atlanta in the evening about 7 or 8 o'clock. It was mailed in ample time to have gone on that train. These trains consume according to their regular time about twenty-four hours between St. Louis and Atlanta. This letter in the ordinary course of mail should have arrived at Atlanta on the evening of December 30th and have been delivered at said bank on the morning of December 31st; this I know from other letters which I have sent on the same date, by the same mail to J. W. Higginbotham, West Point, Ga., in which said Higginbotham was notified of the forwarding of the semi-monthly payroll at our mill. I know from other letters received from Atlanta, that the time consumed between St. Louis and Atlanta, or Atlanta and St. Louis, for the transmission of a letter is about twenty-four hours. I hold in my hand a letter to us from Corbett & McCandless, sent from Atlanta, Ga., October 26th, 1891 which was mailed at Atlanta, as shown by the post office stamp, at 4.30 P. M., on October 26th, and as shown by the stamp of the post office here, was received here October 27th 10 P. M. This letter was received by us on the morning of the 28th of October. I herewith attach said letter, together with the envelope, marked Exhibit "I."

The notice which I ordered inserted, and which was inserted in the Atlanta Constitution of date December 29th, 1890 is as follows:

"Notice.—The coupons due July 1st, 1890, to the first mortgage bonds of the Alabama & Georgia Manufacturing Company, will be paid on presentation at the Atlanta National Bank, Atlanta, Georgia, by said bank.

HUGULEY MANUFACTURING CO.,
D. JANNOPOULO, Prest."

Not hearing from the Atlanta National Bank with reference to this matter, on January 14th, 1891, I caused to be sent to said bank January 14th, the following telegram:

"Atlanta National Bank,
Atlanta, Ga.

How many Alabama & Georgia Manufacturing Company coupons have been paid? Answer.

(Signed) HUGULEY MFG CO.,
St. Louis, Mo."

I attach herewith copy of said telegram, the original not being in our possession or control.

On January 14th, 1891, same date, we received from the Atlanta National Bank a telegram as follows:

"Huguley Manufacturing Company,
St. Louis.

Twenty-two coupons paid.
ATLANTA NATIONAL BANK."

I herewith attach and file the original of said telegram; said copy and original are marked Ex. "J" and "K" respectively. The par value of these bonds was five hundred dollars, and each of the coupons of the par value of twenty dollars.

On January 22nd, 1891, I sent the following telegram to Paul Romary, vice president of the Atlanta National Bank, Atlanta, Ga.

"How many coupons have been paid out of the last deposit? Wire answer. D. Jannopoulo, prest," a copy of which telegram, the original not being in our control, is hereby filed as "Exhibit L." On the same day, January 22, 1891, I received the following telegram.

"D. Jannopoulo, prest St. Louis. Twenty-six coupons paid. C. E. Currier, cashier." I now file this original telegram, marked "Exhibit M."

In answer to interrogatory fourth he states:

I individually had money deposited with the Atlanta National Bank, before and after the purchase at the receiver's sale and in that sense was a customer of the bank, and subsequently, as above stated, the Huguley Manufacturing Co., was a depositor and customer of the bank.

In answer to interrogatory fifth he states:

I have already detailed the facts and circumstances connected with the effort of our company to pay the coupons through the Atlanta National Bank in answer to interrogatory third. We acted in good faith to have the coupons

paid, according to the contract, and the money for these parties was deposited by us with said bank in the amount, and at the date above stated. All the money deposited by us in the Atlanta National Bank to pay coupons due January 1st, 1890, was used in paying said coupons, except twenty which were not presented, and 207 dollars has since the 1st day of July, 1890, down to the present time remained at the Atlanta National Bank to pay same on presentation.

In answer to interrogatory sixth, he states:

I have in answer to interrogatory fourth filed herewith all correspondence relative to the matter of payment or effort to pay said coupons. These letters were written to the parties and at the dates, and mailed, as detailed above and the time consumed in the regular course of mail for such letters to be delivered between St. Louis and Atlanta, was about 24 hours, as above stated and as shown by another letter before referred to of Corbett & McCandless, sent to us from Atlanta.

In answer to interrogatory seventh he states:—

In the latter part of January, 1891, and subsequent to the 22nd day of that month, I went to Atlanta, Ga., and while there called at the Atlanta National Bank, and saw Mr. Romary, the vice president, and Mr. Currier, the cashier. I called at the bank two or three times the same day, and on that occasion I made a visit there and saw Mr. Romary in his private office and there had a conversation with him in regard to the coupons. I had then ascertained through the correspondence and telegrams which are filed herewith as exhibits, that only twenty-six coupons had been presented for payment, whereas those represented a small portion of the coupons which I expected would be presented. At that time the bill of foreclosure filed by J. J. Robinson, vs. The Alabama & Georgia Manufacturing Company in the United States Circuit Court at Atlanta, Ga., to foreclose the mortgage had been filed, and on the occasion of my conversation with Mr. Romary, I asked him how many coupons had been presented and paid. He told me twenty-six. Then I asked him if he would be kind enough to deliver to me the twenty-six coupons that had been paid. Mr. Romary then

walked out of his office into the bank, and in a few minutes returned and handed me the twenty-six coupons contained in three envelopes, endorsed as appears thereon. One of these envelopes contained four coupons that were owned by the Atlanta National Bank, the bank being the owner as I was informed of two thousand dollars worth of bonds. I here now produce said three packages of coupons so delivered to me by said Romary in the form as delivered to me by him. I now file them as exhibits and they are marked respectively N, O and P. Said papers were sent to me by N. J. Hammond, of Atlanta. I complained to Mr. Romary about the refusal of the other coupon holders to take their interest, as the money was there at his bank for them, and he replied that it was no fault of theirs, that they had done all they could, and he hoped that I did not blame the bank. On examining the envelopes I noticed one marked "four coupons payable Atlanta National Bank, credit interest account." I thereupon asked Mr. Romary if those were the coupons and the bonds that the bank held, and he said they were. I was particular about making this inquiry, as it had been intimated to me through other sources that the Atlanta National Bank was either instigating or had employed counsel to foreclose the mortgage. I was informed that Messrs. Abbott & Smith, who were the counsel in the foreclosure proceeding, were the attorneys of the Atlanta National Bank in this matter, hence my solicitude in being satisfied that the bank had collected its coupons. He expressed sympathy for our company, but stated that the bank had done its duty, and that they accepted money for their own coupons, and had done its best as our representative in this matter.

In answer to interrogatory eight he states:—

I have detailed in my answer to interrogatory seventh the conversation with Mr. Paul Romare, vice president of the Atlanta National Bank concerning the payment of the interest. I have detailed all I can now recollect of said conversation. This conversation occurred at the Atlanta National Bank in Mr. Romary's private office in the latter part of January on the occasion of my visit to Atlanta at that time.

In answer to interrogatory nine, he states:—

Since January, 1891, our company made offers to pay the

interest on said bonds payable July 1st, 1891. The interest due January 1st, 1891, the company offered to pay, at the Atlanta National Bank, through N. J. Hammond, and at other places as might be directed by said Hammond. We forwarded to Mr. Hammond sufficient money to pay all the unpaid coupons, and I am informed that we made the effort in due form, and the same was refused, but as to this, Mr. Hammond himself can give particular information. I now produce our letter of date Decr. 29, 1890, to the Constitution Publishing Company of Atlanta in reference to notice as to payment of coupons with the original notice attached and also receipt of Publishing Co., for publication of said notice. The pencil marks thereon were not made by us nor the words stamped thereon, Entered January 1, 1891. I presume they were placed thereon by said Publishing Co. The papers were sent to me by N. J. Hammond. I now attach them to my deposition as Exhibit Q. And further deponent saith not.

D. JANNOPOULO.

Answered, sworn to and subscribed before us this 31st day of October, 1891.

(L. S.) HORTON POPE,
Commissioner.

(L. S.) W. PALMER CLARKSON,
Commissioner.

Commissioner's fees $4, paid by D. Jannopoulo.

(Copy.)

St. Louis, Mo., June 27th, 1890.

Paul Romare, V. P. Atlanta National Bank, Atlanta, Ga.

Dear Sir:—Herewith enclosed find New York Exchange No. 74,142 for $3,000.00, which place to the credit of the Huguley Mfg. Co., $2,691.00 of same is to pay over due coupons on first mortgage bonds of the Alabama & Georgia Mfg. Co. due January 1st, 1890.

Please insert notice in the Atlanta Constitution that these coupons will be paid at your bank on presentation. The amount due January 1st, 1890, was $2,600, interest thereon at 7 per cent is $91.00, total $2,691.00. Please pay these coupons as presented. I am now in control of this company.

Kindly acknowledge receipt of this and state whether you will attend to the matter.

Yours very respectfully,

D. JANNOPOULO,

Pres. & Treas. Huguley Mfg. Co.

Exhibit A to deposition of D. Jannopoulo.

St. Louis, Mo., June 27th, 1890.

Paul Romare, V. P.

P. S. Enclosed find signature of treasurer who will sign all checks, and countersigned by the secretary.

D. JANNOPOULO, Prest.

(Copy.)

St. Louis, Mo., July 10th, 1890.

Paul Romare, V. P. Atlanta National Bank, Atlanta, Ga., Dear Sir:—Please report to me if the coupons of the Ala. & Ga. Mfg Co. have been paid, and also forward the checks that I drew on your bank last January, and oblige

Yours very truly,

D. JANNOPOULO.

Exhibit B to deposition of D. Jannopoulo.

Atlanta, Ga., July 14, 1890.

D. Jannopoulo, Esq., St. Louis, Dear Sir:—Replying to your letter of the 10th inst. We have paid 120 coupons of the Ala. & Ga. Mfg Co., which is all that has been presented up to this date. The checks referred to in your letter merely memorandums, and did not go through our books. We can't find them and presume they were destroyed.

Yours truly,

C. E. CURRIER,
Cashier.

Exhibit C to deposition of D. Jannopoulo.

(Copy.)

St. Louis, Mo., Aug. 19th, 1890.

Paul Romare, Vice Prest., Atlanta National Bank, Atlanta, Ga. Dear Sir:—On June 27th we sent you a New

York exchange for $3000.00, to pay coupons on first mortgage bonds, Ala. & Ga. Mfg Co., due January 1st, 1890, and we suppose they have all been presented by this time.

Please return all paid coupons to us here, and send us New York exchange for the balance due us, obliging

Yours truly,

(Signed) HUGULEY MFG CO.
M. S. TIRMENSTEIN,
Secretary.

Exhibit D, to deposition of D. Jannopoulo.

(Copy.)

St. Louis, Mo., Aug. 30th, 1890.

Atlanta National Bank, Atlanta, Ga., Gentlemen:—On July 10th and Aug. 19th, we wrote you, asking whether you had paid all the coupons for which we sent you June 27th, New York exchange for $3000, which more than covered the amount necessary.

At this writing we are without an answer to either of the above letters.

Please let us know by return mail how much you have paid on this and if all, send us balance here, as requested before.

Yours very respectfully,

(Signed) HUGULEY MANUFACTURING CO.,
MARTIN S. TIRMENSTEIN, Secy.

Exhibit E, to deposition of D. Jannopoulo.

(Copy.)

St. Louis, Mo., Sept. 19th, 1890.

Atlanta National Bank, Atlanta, Ga., Gentlemen:—Your favor of the 16th inst. at hand and noted. In reply would say, in as much as I can not ascertain who holds the other 10 coupons due January 1st, 1890, of the late Ala. & Ga. Mfg Co., we will have enough money with you to pay them off as they turn up, and you will please return the balance to us here. As I do not know how you figured the interest on the 120 coupons you already paid, you will please keep enough to cover the interest due on

the remaining 10 coupons, and when presented to you and paid, please return them to me.

Balance to our Cr.....	$522.60
10 coupons to be paid at $20.00...	200.00
	$322.60

Interest on $200 from January 1st, to July 1st. 6 months.
Balance , which please remit us.

Yours respectfully,

(Signed) HUGULEY MFG CO.
MARTIN S. TIRMENSTEIN, Secy.

Exhibit F. to deposition of D. Jannopoulo.

Atlanta, Ga., Sept. 22d, 1890.

M. S. Termenstein, Esq., Secty, St. Louis., Dear Sir:—As requested I enclose herewith our N. Y. check covering $315.60. We have retained $207.00 to pay 20 coupons and interest 6 mos.

Yours truly,

C. E. CURRUER, Cas.

Exhibit G. to deposition of D. Jannopoulo.

St. Louis, Mo., Dec. 29th, 1890.

Atlanta National Bank, Atlanta, Ga., Gentlemen:—Enclosed we hand you New York Exchange No. 254,377, for $2,678.00, two thousand six hundred and seventy-eight dollars, which place to the credit of the Huguley Mfg Co., and pay coupons due July 1st, 1890, of the first mortgage bonds of the Ala. & Ga. Mfg Co., amounting to $2,600.00, together with interest on same $78.00 total $2,678.00—and return coupons as paid to us here. We have inserted notice in the *Constitution* of your city that these coupons are payable at your bank on presentation. Please honor and acknowledge receipt hereof.

Yours respectfully,

(Signed) HUGULEY MFG CO.,
MARTIN S. TIRMENSTEIN, Secy.

Exhibit H. to deposition of D. Jannopoulo.
Post marked Atlanta, Ga., Oct. 26, 4:30 P. M., 1891.

Post marked on back, Saint Louis, received 27, 10 P. M., 1891.

Huguley Mnfg Co.,
St. Louis,
Mo.

Exhibit I. to deposition of D. Jannopoulo.

Atlanta, Ga., Oct. 26, 1891.

(Dictated by Torbett.)

Huguley Mnfg Co., St. Louis, Mo., Dear Sirs:—Enclosed herewith we send you two drafts with receipts attached to each, which please sign at the cross marks on the front, also at the cross marks on the back of draft, and return to us. As soon as we get all the collections together, will make the final and complete report. Hope this is satisfactory.

Yours very truly,

TORBETT & McCANDLESS.

(Copy of Telegram.)

St. Louis, Mo., Jan. 14th, 1891.

Atlanta National Bank, Atlanta, Ga., How many Alabama & Georgia Manufacturing Company's coupons have been paid. Answer.

HUGULEY MFG CO.,
St. Louis, Mo.

Paid.

Exhibit J. to deposition of D. Jannopoulo.

The Western Union Telegraph Company.

Received at 50 Jan 14 1891

Dated Atlanta Ga 14

To Huguley Mfg Co St. Louis

Twenty two coupons paid

ATLANTA NATL BANK.

Exhibit K. to depositions of D Jannopoulo

(Copy of Telegram.)

Paul Romare, Vice Prest. Atlanta National Bank,

Atlanta, Ga.: How many coupons have been paid out of last deposit, wire answer.

D. JANNOPOULO, Prest.

Paid.

Exhibit L. to deposition of D. Jannopoulo.

The Western Union Telegraph Company.

Received at 40 Jany 22, 1891
Dated Atlanta, Ga. 22
To D. Jannopoulo, Prest, St. Louis:
Twenty-six July coupons paid.

C. E. CURRIER, Cash.

Exhibit M. to deposition of D. Jannopoulo.

ATLANTA NATIONAL BANK.

4 coupons Ala. & Ga. Mfg. Co. $20—80.
Due July 1-90. Payable Atlanta National Bank.
Credit Int. ac.

Exhibit N. to deposition of D. Jannopoulo.

ATLANTA NATIONAL BANK.

14 coupons Ala. & Ga. Mfg. Co. $280.00
July 1, 1890, 6 mos int 9.80

$289.80

Exhibit O to deposition of D. Jannopoulo.
Credit W. C. & L. Lanier, Jan. 8, 1891.

ATLANTA NATIONAL BANK.

8 coupons Ala. & Ga. Mfg. Co 20$..... 160.00
due July 1, 1890, 6 mos Int..... 5.60

Total 165.60

Exhibit P to deposition of D. Jannopoulo.
Credit W. C. & L. Lanier.

Atlanta, Ga., Jan. 1891.

Huguley Mfg. Co., City.
To Constitution Publishing Co., Dr.
Jan. 2. To 8 Lines Local Coupon N 3 ti..... $3.60
Paid by N. J. Hammond, Jan. 30th, 1891.

CONS. PUBG. CO., A. L. FOWLER.

St. Louis, Mo., Dec. 29th, 1890.

Constitution Publishing Co., Atlanta, Ga.: Gentlemen—Enclosed we hand you notice, which please insert in your daily paper on receipt of this, 31st of December, January 1st and 2d, i. e., three times and send us copy of same, with bill to this office, and we will remit you direct.

Yours very truly,

HUGULEY MFG. CO.
D. JANNOPOULO, Prest.

Exhibit Q to deposition of D. Jannopoulo.

Entered Jan. 1, 1891.

St. Louis, Mo., Dec. 29th, 1890.

Notice.—All coupons due July first, 1890, to the first mortgage bonds of the Alabama & Georgia Manufacturing Company, will be paid on presentation at the Atlanta National Bank, Atlanta, Georgia, by said bank.

HUGULEY MFG. CO.
D. JANNOPOULO, Prest.

Entered Jan. 1, 1891.

John C. Orrick:—

To the first interrogatory he answers:

I know the parties, except the Alabama & Georgia Manufacturing Company. I have heard of this corporation, but not until about the time of the sale of the property by Fisher, receiver.

To the second interrogatory he answers:

I have never had any connection with the Alabama & Georgia Manufacturing Company. I am connected with the Huguley Manufacturing Company. I am an officer and director thereof. I was interested in the purchase of the property at the sale made by Fisher, receiver at Hamilton, Ga. The property was knocked down on my bid at that sale, I acting as trustee with Malcolm Graham and J. M. Chilton, in whose names the property was conveyed by Fisher, receiver. At that time I had no personal interest in the property, but was acting as attorney, partly for D. Jannopoulo. Subse

quently the trustees conveyed the property to the Huguley Manufacturing Company, in which company both myself and Mr. Jannopoulo then became and are now stockholders.

To the third interrogatory he answers.

I have not personally paid any interest coupons of the Alabama & Georgia Manufacturing Company, but I know that the Huguley Manufacturing Company through Mr. D. Jannopoulo its president has either paid or offered to pay all the interest on the bonds of the Alabama & Georgia Manufacturing Co.

To the fourth interrogatory he answers:—

D. Jannopoulo transacted business with the Atlanta National Bank either by depositing money therein before said purchase and since said purchase, by appointing it its agent to pay coupons on the bonds of said Alabama & Georgia Manufacturing Company that have become due and payable since said purchase.

To the fifth interrogatory he answers:—

The Atlanta National Bank of Atlanta, Ga., was furnished the sum of $..... by the Huguley Manufacturing Company through D. Jannopoulo, its president to pay all interest coupons on all the bonds of said Alabama & Georgia Manufacturing Company, sixty-five thousand dollars in all, and I am informed that said Atlanta National Bank offered to pay all of said interest coupons due and payable, January 1st, 1891, and that under said offer, only a portion of said coupons were presented to the bank and paid; the remainder were not presented for payment although the money to pay the same was deposited in due time with said bank, and still remains there.

To the sixth interrogatory he answers:—

I wrote no letters in connection with the offer to pay, or the payment of interest. This was all done through Mr. Jannopoulo as president of the Huguley Manufacturing Co. According to the regular course of mails, it is twenty-four hours' time between St. Louis and Atlanta.

To the seventh interrogatory he answers—

I only know of the refusal to accept interest through hearsay. The matter as to payment of interest &c., was under the immediate charge of Mr. Jannopoulo as president of the company.

To the eighth interrogatory he answers:—

I had no conversation with any officer of the Atlanta National Bank.

To the ninth interrogatory he answers:—

On my advice Mr. Jannopoulo, as president of the Huguley Manufacturing Company sent the money to cover the coupons that were payable July 1, 1891, to Mr. N. J. Hammond, as the attorney of the company, and to take such steps as in his judgment were necessary and proper to pay the coupons.

I will state that with reference generally to the selection of the Atlanta National Bank as an agent to pay the coupons due on the bonds of the Alabama & Georgia Manufacturing Company, I, as counsel for the Huguley Manufacturing Company, advised it, and continued the Atlanta National Bank as the place for such payment, understanding at the time that the Alabama & Georgia Manufacturing Company was practically defunct, and had no office at West Point, and when the bondholders in July, 1890, accepted their interest at the Atlanta National Bank from the Huguley Manufacturing Company, I felt there could be no question as to the propriety of thereafter continuing to have the same paid there.

And further deponent saith not.

JOHN C. ORRICK.

Answered, sworn to and subscribed before us this the 31st day of October, 1891.

(L. S.) HORTON POPE,
Commissioner.

(L. S.) W. PALMER CLARKSON,
Commissioner.

We consent that the copies of letters, telegrams and notices may be read without accounting for originals, subject to such objections as could be made to the originals as evidence.

This Jany. 7, 1891.

ABBOTT & SMITH, Sols., &c.

We agree that these intgs. may be returned to the commissioners in order that the witness D. Jannopoulo may answer the 9th cross intgs. without taking a formal order

of the court allowing the commission to be withdrawn for that purpose. Dec. 1, 1891.

And may correct any error as to date of letter.

DORSEY, BREWSTER & HOWELL,
ABBOTT & SMITH,
Sols. for Plff. Robinson.

N. J. & T. A. HAMMOND,
Attys. for Defts. as per Record.

By virtue of the attached agreement of counsel of date December 1st, 1891, D. Jannopoulo, the witness named, personally appeared before us and in answer to the 9th cross interrogatory herein to him says as follows; the Huguley Manufacturing Company since the property of the Alabama & Georgia Manufacturing Company was sold by Fisher, receiver has paid the interest coupons on the bonds of the Alabama & Georgia Manufacturing Company and offered to pay all that were due—all the coupons have been cancelled as paid. We do not now nor never have held any coupons as bearer. I never paid any of these coupons myself, but I received most of the coupons after they were paid from the Atlanta National Bank and cancelled them and filed them away as vouchers. I instructed the Atlanta National Bank to pay the coupons not to buy them. I did not place any money for interest at West Point as the Atlanta National Bank at Atlanta was our agent to pay the coupons—I caused the interest money to be placed there. The bondholders while Fisher was receiver I was informed accepted this bank as place of payment and in July 1890, after the Huguley Manufacturing Company took charge, the bondholders again accepted their interest at the Atlanta National Bank and so in December, 1890, I sent the interest money to the Atlanta National Bank as before under the advice of my attorney, John C. Orrick to pay the coupons due July 1st, 1890. No money was placed in the city of West Point or elsewhere in the month of December, 1890, or in the month of January, 1891, for the payment of coupons on their face falling due in January, 1891, but the money sent about that time was to pay coupons which on their face became due July 1st, 1890. I sent to N. J. Hammond in Atlanta in June 1891, the money to pay the coupons due on their face January

1st, 1891, to be used by him or his agents for that purpose. I know nothing personally about any of these payments except by communications and reports from the Atlanta National Bank and Messrs. N. J. and T. A. Hammond. We never authorized the Laniers or anybody else at West Point to pay any interest but our agents may have requested such payments to be made and may have made payments there.

In regard to the date of my letter to the Atlanta National Bank in December, 1890, in my answer above given the date of the said letter appears as follows "27th." of December, 1890 this is an error, this date should be "29th." of December, 1890.

D. JANNOPOULO.

Answered, sworn to and subscribed before us this 7th day of December A. D. 1891.

(L. S.) HORTON POPE,
Commissioner.

(L. S.) W. PALMER CLARKSON,
Commissioner

United States of America, Northern District of Georgia. In the Circuit Court of the United States for the Northern District of Georgia.

To Horton Pope and Bruno Seeman:

Whereas, There is a certain matter in controversy now pending and to be tried in the said Circuit Court, between J. J. Robinson, trustee, and Alabama & Georgia Manufacturing Company et al.;

And Whereas, John C. Orrick is a material witness in said suit on behalf of the defendants and can not attend said Circuit Court in person without manifest inconvenience;

Now Know Ye, That reposing special trust and confidence in your prudence and fidelity, you are hereby appointed and you, or any two or more of you, are hereby authorized and required to cause the said John C. Orrick personally to come before you, and after being duly sworn, to examine him concerning the said suit, agreeably to the interrogatories hereunto attached; and the answers to the same being plainly and dis-

tinctly written, your are to send the same, together with this writ, closed up under your hands and seals, to the clerk of said court, at Atlanta, Ga., to the court now in session.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 14th day of Nov., 1891.

(SEAL) O. C. FULLER, Clerk.

Interrogatories.

Bill for Foreclosure of Mortgage. In U. S. Circuit Court for Northern District of Georgia.

J. J. Robinson, Trustee,
versus
Alabama & Georgia Manufacturing Company et al.

Interrogatories to be answered by John C. Orrick, a witness material for said defendants and who resides out of said county, to-wit, in St. Louis, Missouri.

1. If as agent for D. Jannopoulo or anyone else interested in above bill you talked with said plaintiff or with Denson, admr or executor of Walker about why said suit was brought, state all of such conversation pertinent to this matter and if either showed you any paper, state what paper and its contents.

2. State anything else you know to benefit said defendants.

N. J. & T. A. HAMMOND,
Defts Attys as per record.

Acknowledgment of Service.

Service acknowledged and copy waived. Let commission issue in blank without order of court.
Nov. 14, 1891.

ABBOTT & SMITH,
Plff Sols.

Filed in clerk's office 14 day of Nov. 1891.

O. C. FULLER, Clerk.

Bill for the Foreclosure of Mortgage.

In the United States Circuit Court, for the Northern District of Georgia.

J. J. Robinson, Trustee,

versus

Alabama & Georgia Manufacturing Co. et al.

State of Missouri,

City of St. Louis.

By virtue of a commission issuing out of the Honorable Circuit Court of the United States for the Northern District of Georgia, we have called John C. Orrick the witness in the deposition named to come before us and being duly sworn true answers to make to the interrogatories to said commission annexed, deposes and answers as follows: To the first interrogatory first he answers that, as attorney and agent for D. Jannopoulo and the Huguley Manufacturing Company, on the 29th day of January, 1891, he visited LaFayette, Ala., for the purpose of tendering to Mr. Denson, the administrator or executor of the Wharfar estate, the July coupons on the Alabama & Georgia Manufacturing Company, coupons, held by him as administrator or executor of that estate, and also to ascertain from him and Judge Robinson, one of the trustees in the Alabama & Georgia Manufacturing Company's mortgage, why this suit was brought. On the morning of the 29th, day of January, 1891, he started in a buggy with John T. Higginbotham from West Point to LaFayette, leaving Mr. Jannopoulo at the hotel at West Point. We arrived at LaFayette about mid-day. After dinner Mr. Higginbotham and myself went to Mr. Denson's law office and found him in. I proceeded at once to state the object of my visit. He informed me that he held for that estate twenty bonds, that he wished to make a division of the estate and therefore wanted the money for his bonds, I told him that his interest money for his July, 1890, coupons had been placed at the Atlanta National Bank in due time for him as well as all the other like coupon holders, and I did not understand why they refused to take the money; that I had brought with me sufficient money in legal tender to pay to him the amount of those coupons

and offered him the money, which he declined to receive, stating that he would not take the interest, but would take payment for his bonds. He then stated to me that the Huguley Manufacturing Company had failed to deposit the money to pay the July, 1890, coupons at the Atlanta National Bank in due time; I, in answer, said that he was mistaken; that I knew the money had been sent from St. Louis to the Atlanta National Bank on the 29th, of December and that by ordinary course of mail the money should have reached the Atlanta National Bank on the morning of the 31st of December. I think I mentioned to him that letters, which were sent to West Point, Georgia, in the same mail with that to the Atlanta National Bank on the 29th of December, were received at West Point on the 31st of December. We then had some conversation about the time when these coupons should be paid, the first of January being a legal holiday. I remarked that even if the money had not arrived before the first of January, it was not our fault that it was not paid on that holiday, the bank being closed, and that surely the payment on the second of January would have been in ample time. Then Mr. Denson informed me that we did not offer on the second of January to pay these July coupons; I remarked that he certainly was in error about that, as we had caused notice to be published in the Atlanta Constitution in its issue of the second of January, announcing that the July, 1890, coupons would be paid on presentation at the Atlanta National Bank. He then stated while this might be so, that the Atlanta National Bank had nevertheless telegraphed W. C. & L. Lanier, bankers at West Point to pay, not the July, 1890, coupons, but the January, 1891, coupons. I expressed surprise at this and asked him whether that mistake had not been corrected by the bank. My recollection is he informed me that they had, but not until the third of January and then it was too late. I told Mr. Denson, that I could not understand this, as the Atlanta National Bank owned four of those bonds and had accepted payment of its coupons due July, 1890, hence it could not have been under misapprehension as to what coupons were to be paid. Mr. Denson on this last statement of mine, seemed very much taken aback, and he remarked, "Do

I understand you to say Mr. Orrick, that the Atlanta National Bank has accepted payment of its July, 1890, coupons?" I said, "Emphatically yes," then he remarked, "Well, if that is so I may accept interest for my July coupons." Mr. Denson seemed so much surprised at my statement that the Atlanta National Bank had accepted payment that I thought possibly I might be mistaken as to the information on this subject, which I had obtained from Mr. Jannopoulo, but said to Mr. Denson, Mr. Jannopoulo is now at West Point and when I return this evening I will see him and have him, if possible, confirm the statement I have made to you. Mr. Denson then requested me, on my return to West Point, to see Mr. Jannopoulo on this subject and wire to him the result of my conference. On my return to West Point that night I did see Mr. Jannopoulo, and found that he had in his possession in his valise at the hotel the July, 1890, coupons which had been attached to the Atlanta National Bank's four bonds and which had been paid. The next morning from West Point I wired to Mr. Denson substantially as follows: "July, 1890, coupons Atlanta National Bank paid. Jannopoulo has them here in his possession." I rather anticipate hearing from Mr. Denson after this dispatch and have him inform me that he would also accept his interest, but I did not and have not since.

In reference to the connection of the Atlanta National Bank with this bill of foreclosure, on my expressing some doubt, under the circumstances, that the Atlanta National Bank had taken any part or was interested in this bill for foreclosure, Mr. Denson smiled and gave me to understand that Messrs. Abbott & Smith, the attorneys of the Atlanta National Bank, had prepared the bill. From Mr. Denson's office I proceeded with Mr. Higginbotham to the residence of Judge Robinson, the complainant in this case. We found him at home sick and his son was quite ill in bed in the same room with the judge. The judge was apparently scarcely able to sit up and I felt great hesitancy in annoying him with questions about the matter in hand. I asked him if he or anybody else, so far as he knew, had served any notice upon the president of the Alabama and Georgia Manufacturing Company, calling attention to any default in the payment of the interest on the bonds, or had made any de-

mand for payment upon any one, and he stated he had not given any notice or made any demand and knew nothing about any notice. I then asked him whether he had served any notice on the Huguley Manufacturing Company, calling attention to any default in the payment of interest. He said he had not. I then asked him why he had filed the bill and his answer was that he was acting under the advice of Mr. Denson and what Mr. Denson told him to do in the matter he had done, and referred me to Mr. Denson. As I had already seen Mr. Denson I did not call again, but Mr. Higginbotham and myself proceeded at once from Judge Robinson's house to West Point.

In view of conduct of Atlanta National Bank the money for January, '91, coupons was sent direct to N. J. Hammond as advised by me. This answer may be treated as an answer, not only to the first, but to the second interrogatory, and further deponent saith not.

JOHN C. ORRICK.

Answered, sworn to, and subscribed before us this 23rd day of November, 1891.

(L. S.) HORTON POPE,
Commissioner.

(L. S.) BRUNO SEEMAN,
Commissioner.

$4 to be taxed as costs for commissioners.

United States of America, Northern District of Georgia.
In the Circuit Court of the United States for the
Northern District of Georgia:

To Horton Pope and Bruno Seeman:

Whereas, There is a certain matter in controversy now pending and to be tried in the said Circuit Court, between J. J. Robinson Trustee and Alabama & Georgia Manufacturing Company et al.

And Whereas, D. Jannopoulo is a material witness in said suit on behalf of the defendants and can not attend said Circuit Court in person without manifest inconvenience.

Now Know Ye, That reposing special trust and confi-

dence in your prudence and fidelity, you are hereby appointed, and you, or any two or more of you, are hereby authorized and required to cause the said D. Jannopoulo personally to come before you, and after being duly sworn, to examine him concerning the said suit, agreeably to the interrogatories hereunto attached; and the answers to the same being plainly and distinctly written, you are to send the same, together with this writ, closed up under your hands and seals, to the clerk of said court, at Atlanta, Ga., to the court now in session.

Witness, The Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 14 day of November, 1891.

(SEAL) O. C. FULLER, Clerk.

Bill for Foreclosure of Mortgage. In the United States Circuit Court for the Northern District of Georgia.

J. J. Robinson, Trustee,

vs.

Alabama & Georgia Manufacturing Company et al.

Interrogatories to be answered by D. Jannopoulo a witness material for said defendants and who resides out of said county to-wit, at St. Louis, Missouri.

1st. If since the sale of the mortgaged property of said defendant by Fisher, receiver, any insurance has been kept on the same and is yet kept state in what amounts and to whom payable and who paid the premiums? Who holds said policies?

2nd. If since said sale any improvements have been made on said premises or any repairs or any additions of machinery or other valuable thing, give as far as you a statement thereof and the cost and who paid same?

3rd. How came the Huguley Manufacturing Company into possession of said property? What right or title has it to same?

4—State anything else you know to benefit said defendants.

N. J. & T. A. HAMMOND,
Attys for Defts as per Record.

Service acknowledged and copy waived. Let commission issue in blank without order of court.

Nov. 14, 1891.

DORSEY, BREWSTER & HOWELL,
ABBOTT & SMITH,
Plff Sols.

Filed in clerk's office, 14 day of Nov., 1891.
O. C. FULLER, Clerk.

Cross Intgs.

1. Who bought the additional machinery? From whom was it bought? Who paid for the same? Give the name of each person or corporation from whom the machinery was bought.

2. How do you know what machinery was bought or additions made to the property?

3. What position did Logan Owens hold in said factory? In what position if any was he employed by the Huguley Mfg Co.?

DORSEY, BREWSTER & HOWELL,
ABBOTT & SMITH,
N. D. DENSON,
Sols for Plff.

Bill to Foreclose Mortgage. In U. S. Circuit Court for the Northern District of Georgia.

J. J. Robinson, Trustee,
v.
Alabama & Georgia Manufacturing Company et al.

State of Missouri,
City of St. Louis. ss.

By virtue of a commission issuing out of the Honorable Circuit Court of the United States for the Northern District of Georgia, to us directed, we have caused D. Jannopoulo the witness in said commission named to come before us and being duly sworn true answers to make to the interrogatories to the said commission annexed deposes and answers as follows:

To the first interrogatory he answers that since the sale

of the mortgage property of the Alabama and Georgia Manufacturing Company, by Fisher, receiver, the mortgaged property has been kept fully insured from the time of the sale down to the present time, and $65,000 of said insurance, in standard insurance companies, has been kept from the time of said sale down to the present time, and in case of loss such insurance is payable to the trustees in said mortgage. The Huguley Manufacturing Company paid the premiums and the policies are now in the possession of the Huguley Manufacturing Company here in St. Louis, for safe keeping; that the insurance on the property of the Huguley Manufacturing Company prior to January 1st, 1891, and continuously down to the present time, has been a total of $200,000, and all of said insurance has been held in standard insurance companies, represented by Torbitt & McCandless, and a part for a short time by Mr. Jackson of West Point.

For answer to the second interrogatory he states that since said sale by said Fisher, receiver, the Huguley Manufacturing Company has made improvements to its mill and machinery and repairs, as follows: $14,186.10 was spent in improvements and maintaining its value. As soon as we obtained the property from Mr. Fisher we commenced making important repairs and have continued right along since. These repairs were paid for by the Huguley Manufacturing Company.

For answer to the third interrogatory he states that the Huguley Manufacturing Company came into possession of said property through conveyances as follows: H. C. Fisher, receiver, to Malcolm Graham, J. C. Orrick and John M. Chilton, trustees; the same parties thereafter conveyed to the Huguley Manufacturing Company; also W. H. Huguley & Co., quit-claimed all their interest to the Huguley Manufacturing Company. The title possessed by the Huguley Manufacturing Company is all the title which the Alabama and Georgia Manufacturing Company had, together with the quit-claim of W. H. Huguley & Co., for the same.

Cross Interrogatories.

In answer to cross interrogatory first he states that the additional machinery bought was purchased by the

Huguley Manufacturing Company through him as president. This machinery was bought from different parties, for example, we bought from Boston new carding cloth from Stoddard Lovering & Co.; we bought from Moore Reed & Co., of Baltimore, new parts of machinery to substitute for old parts, and from others. We have had constantly employed mechanics in the mill, paying out about $350.00 each month for their services in repairing and straightening out the machinery. We renewed the water house and purchased lumber for that purpose, improved the water dam, we built two new houses for operatives and repaired the others, some thirty or forty. We repaired the mill building, roofs, etc. I can not give the items of all the names.

In answer to interrogatory second he states: I know of the machinery bought, as the same was done on my order and also the additions of the property. The amount mentioned as having been spent on the property was applied not only to additional machinery, but generally to betterments of the property. I have the vouchers in my office here, which shows these expenditures.

In answer to interrogatory third he states: Logan Owen held the position of superintendent, which position he occupied from August, 1890, to August 20th, 1891, and in this connection I exhibit herewith a letter from Mr. Owen, tendering his resignation, in which he says the mill property has improved 50 per cent since he took charge of it. I hereto attach that letter, dated August 20th, 1891, and signed by L. Owen, which is marked Exhibit A. And further deponent saith not.

D. JANNOPOULO.

Answered, sworn to and subscribed before us this 24th day of November, A. D., 1891.

(L. S.) HORTON POPE,
Commissioner.

(L. S.) BRUNO SEEMAN,
Commissioner.

Commissioners fee $4 paid by D. Jannopoulo.

Exhibit A.

August 20th.

D. Jannopoulo, Prest., St. Louis, Mo. Dear Sir:—
Have telegraphed you this morning.

Have accepted another position. Mr. Hick will take charge of mill until further instructions and now confirm same. I will assist Mr. Hick all I can, and stay with him 8 or 10 days as mill is now in fair condition. I estimate its improvement at 50 per cent and think Mr. Hick can manage it nicely. Have plenty of help now and think he can get along with them.

Thanking you for the past, I remain yours very truly,

L. OWEN.

Bill, &c.

In Circuit Court of United States. Northern District of Georgia.

J. J. ROBINSON, TRUSTEE,
versus
THE ALABAMA AND GEORGIA MANUFACTURING COMPANY, ET AL.

Counsel for plaintiff and defendant agree that the following facts may be considered as proven in the cause, without putting parties to the expense of proving the same formally on the trial.

That all of the property of said Ala. & Ga. Mfg. Co., mortgaged by the trust deed was sold by Fisher, receiver, on the first Tuesday of January, 1890, before the court house door of Harris county to the highest bidder, and the same was purchased by certain persons who transferred all of their rights, title and interest in the property to the Huguley Mfg. Co., and that said company is now in possession of the same; that the sale was made subject in all respects to the lien of said mortgage or deed of trust, made to secure the bonds of the Ala. & Ga. Mfg. Co.

That said W. C. Yancey died prior to the filing of this bill.

That W. T. Huguley is interested adversely to the plaintiff in this cause.

Counsel agree that the mortgage may be proven by certified copy without accounting for the original, should W. T. Huguley fail to produce the same as he is notified to do and that but one of the bonds need be put in evidence by plaintiff, it being admitted that the others are fac similes of it, except as to numbers thereon, and that

the others at the date of the beginning of the suit were owned by the persons named as holders in the testimony of J. T. Higginbotham, J. J. Robinson, W. C. & L. Lanier and Carrier in this case.

Counsel agree that the letter and postscript of J. R. Lewis, postmaster, hereto attached, may read as his evidence with like effect as if sworn to by him. Complainant on the trial of said cause will admit also as follows: H. C. Fisher was appointed receiver of the Alabama & Georgia Manufacturing Co., on the of November, 1888.

At the last annual meeting of the directors of Ala. & Ga. Mfg. Co., W. H. Huguley was elected its president.

The equity of its redemption in and to said mortgaged property only was bought by Graham, Orrick Chilton.

N. J. and T. A. Hammond, on the 19th of June, 1891, offered to pay interest to plaintiff Robinson, as per the copy letter hereto attached, and that Robinson declined to accept interest, as shown by his letter and that of Denson, hereto attached. N. J. & T. A. Hammond's original letter need not be accounted for, nor the hand writing of the others proven. And that on the 10th of December, 1891, N. J. & T. A. Hammond made to Robinson, trustee, the offer in their letter of that date, a copy of which is hereto attached, and he declined said offer, and the letter need not be produced; and counsel for plaintiff admit that said offer and advertisement was about to be repeated as to the interest due January 1st, 1892, but plaintiff's counsel, to save expense of advertisement and profit agreed to consider such offer made and refused.

On the 26th of June 1891, at West Point, Ga., the following notice was published in the West Point *Press* to-wit:

NOTICE.—"All coupons which fell due 1st January, 1891, to the first mortgaged bonds of the Alabama & Georgia Manufacturing Company, plus interest on said coupons from January 1st, 1891, will be paid on presentation to John J. Higginbotham, at the office of said company at the store of W. H.

Huguley & Co., West Point, Georgia, or at the office of N. J. & T. A. Hammond, Atlanta, Ga., at the option of the holders.

HUGULEY MANUFACTURING CO.,
D. JANNOPOULO, *President.*"

And like notice was published therein as to the interest due July 1st 1891 and a like refusal to accept was made as stated by Higginbotham as to the interest due July 1, 1891.

Also in Jany. 1891 was published in the Atlanta *Constitution* the notice set forth in the testimony of D. Jannopoulo but its first appearance was Jany, 2, 1891.

And afterwards, on the 28th, of June 1891, the following notice was published in said *Constitution.*

NOTICE.—"All coupons which fell due January 1, 1891, to the first mortgage bonds of the Alabama & Georgia Manufacturing Co., plus interest on said coupons from January 1, 1891 will be paid on presentation to John F. Higginbotham at the office of said company at the store of W. H. Huguley & Co., West Point, Ga., or at the office of N. J. & T. A. Hammond, Atlanta, Ga., at the option of the holders.

HUGULEY MANUFACTURING CO.,
D. JANNOPOULO, *President.*"

And afterwards on December 11th, 1891, appeared the following notice:

NOTICE.—" All coupons which fell due 1st July, 1891, to the first mortgage bonds of the Alabama & Georgia Manufacturing Company, plus interest on said coupons from January 1st, 1891, will be paid on presentation to John T. Higginbothom, at the office of said company, at the store of W. H. Huguley & Co., West Point, Ga., or at the office of N. J. & T. A. Hammond, Atlanta, Ga., at the option of the holders.

HUGULEY MANUFACTURING, CO.,
dec 11 d 3t D. JANNOPOULO, *President.*

All these notices appeared three days successively; and we waive production of the papers containing the said notices.

Fisher, receiver by direction of the court ran said Ala.

& Ga. Mfg. Co. until about months before the date of the decree, to-wit, 1899; but he kept an office as receiver in West Point, Ga., until he turned the property over to the purchasers sometime in January 1890, that at the date of his appointment and service he lived and has continued to live at Newnan, Ga., and is still receiver of said company.

Counsel admit that the allegations of facts in the petition of the St. Louis Trust Company, trustee, are true, and that their mortgage is subject to the older lien of the mortgage to plaintiff and his co-trustees.

All these consents and admissions are made for this case only. Subject to objections as to the compency of any of the same. This December 31, 1891.

ABBOTT & SMITH,
DORSEY, BREWSTER & HOWELL,
Sols. for Plaintiffs.

N. J. & T. A. HAMMOND,
For Defts.

ATLANTA, GA., June 19, 1891.

Judge J. J. Robinson, LaFayette, Ala. DEAR SIR:—We are ready to pay the coupons falling due the first day of Jany. 1891, and the interest thereon since that time, of the bonds of the Alabama & Georgia Manufacturing Company, concerning which bonds you brought suit as trustee, in the U. S. Federal Court for foreclosure of the mortgage.

Or we will pay any part of the same which may be presented here to us, or if you prefer, we will have the same sent to you personally, or pay it to you at the old office of said company at West Point. Or if more agreeable to you, and you will furnish us the names of the holders whom you represent, we will have the tender made to them directly.

If you furnish us such list, please state the number of bonds held by each, so that we may know what amount will be due to each.

Prompt answer will oblige

Yours truly,

N. J. & T. A. HAMMOND.

ATLANTA, GA., Dec. 10, 1891.

Judge J. J. Robinson, LaFayette, Chambers County, Ala.

DEAR SIR:—On the 19th of June last, we wrote you as follows:

"We are ready to pay the coupons falling due the first day of Jan'y, 1891, and the interest thereon since that time, of the bonds of the Alabama & Georgia Manufacturing Company, concerning which bonds you brought suit as trustee, in the U. S. Federal Court, for foreclosure of the mortgage.

Or we will pay any part of the same which may be presented here to us: or if you prefer, we will have the same sent to you personally, or pay it to you at the old office of the company at West Point. Or if more agreeable to you, and you will furnish us the names of the holders whom you represent, we will have the tender made to the directly.

If you furnish us such list, please state the number of bonds held by each, so that we may know what amount will be due to each."

You replied to us on June 23rd as follows:

"Your favor of June 19, 1891, received, in which you propose to pay the Jan. '91 interest on the bonds of the Ala. & Ga. Mfg. Co., in certain ways therein stated. In reply would say that my attorney, Col. N. D. Denson, will be in Atlanta next Friday and see you in reference to it."

Your attorney, Mr. Denson, did not come to Atlanta as you expected, but on the 25th of June wrote us as follows:

"The trustee is still of the opinion that the terms of the trust deed have been violated and that a foreclosure of the trust deed ought to be had, and he declines the proposition submitted in your letter and will press his suit for a foreclosure."

We now repeat our offer of June 19th, 1891, both as applies to the coupon falling due the first day of January, 1891, and the interest thereon since that date, and enlarge it to cover also the coupons falling due on the first day of July, 1891, and the interest thereon since that time. Either or both will be paid by us here or by Mr. Higginbotham at West Point, according to the terms of our said letter of June 19th, as you may prefer.

Should you decline this offer, as we suppose from your former letter you will, we will be obliged if you will simply decline in such terms as you see proper on this letter itself, and return it to us, so as to save the trouble of serving you with notice to produce and with taking evidence to prove the fact of sending you this letter.

Yours truly,

N. J. & T. A. HAMMOND.

LAFAYETTE, Ala., June 23, 1891.

N. J. & T. A. Hammond, Attys. etc., Atlanta, Ga.

DR. SIR:—Your favor of June 19, 91, received, in which you propose to pay the Jany. 91 interest on the bonds of Ala. & Ga. Mfg. Co., in certain ways therein stated. In reply would say that my attorney Col. N. D. Denson will be in Atlanta, next Friday and see you in reference to it.

Yours truly,

J. J. ROBINSON, *Trustee, etc.*

LAFAYETTE, Ala., June 25, 1901.

Hon. N. J. Hammond, Atlanta, Ga., MY DEAR SIR:—I can not go to Atlanta tomorrow as I had expected to go. The trustee is still of the opinion that the terms of the trust deed have been violated and that a foreclosure of the trust deed ought to be had, and he declines the propositions submitted in your letter, and will press his suit for a foreclosure.

With kind regards I am, very respectfully yours,

N. D. DENSON.

ATLANTA, Ga., Nov. 17th, 1891.

Hon. N. J. Hammond, Atlanta, Ga., DEAR SIR:—In reply to yours of Nov. 13th will state that the time from St. Louis, Mo., to Atlanta, Ga., now is 23 hours and 5 minutes arriving here 6:40 P. M. and 23 hours and 10 minutes arriving here 7 A. M., the schedules in Dec. and Jany. last were about the same as now if any difference it is only a few minutes. Distribution of mail is made shortly after reaching this office. The *Constitution* and Atlanta National Bank sent for their mail at that time.

Respectfully,

J. R. LEWIS, P. M.

P. S.—St. Louis mail reached this office a year ago by the Chattanooga & Atlanta Ry. P. O., now it comes by the same trains, but by the Nashville & Atlanta Ry. P. O. By regular schedule mail leaves St. Louis, Mo., at 7:50 A. M. and 7:35 P. M. and reaches Atlanta 7:00 A. M. and 6:40 P. M. arriving at the post office 15 to 20 minutes later.

Dec. 30th., 90,	these	mails	arrived	in	this	office	at	7:15	A. M.	and	6:55 P. M
" 31st., 90,	"	"	"	"	"	"	"	7:20	"	"	7:00 P. M.
Jany. 1st, 91,	"	"	"	"	"	"	"	7:05	"	"	7:38 P. M.
" 2d., 91,	"	"	"	"	"	"	"	7:45	"	"	7:30 P. M.

At dates above given the morning train was due at 6:48 A. M. at Atlanta. No regular St. Louis mail reaches this office by the W. & A. R. R. train at 1:45 P. M. There may be some missent mail from St. Louis by that train. As a rule, mail is distributed to its boxes within an hour after its arrival, generally much sooner.

Respectfully, etc.,

J. R. LEWIS, P. M.

Petition as to Taxing Fees of Counsel.

Bill for Foreclosure, etc. In said Circuit Court of U. S. for said district. Decree at March term 1892. To the judges of said Circuit Court:

J. J. ROBINSON, TRUSTEE,
vs.
THE ALABAMA & GEORGIA MANUFACTURING CO. ET AL.

The petition of J. J. Robinson as trustee, and plaintiff in the above stated cause, shows, that for the purpose of prosecuting said foreclosure proceedings, and bringing the property mentioned in the pleadings, under control of the court, and securing the same for the purposes of the trust which is fully set out in the pleadings in the cause, your petitioner has been compelled to employ counsel. and to that end he employed as his solicitors, Dorsey, Brewster & Howell, Abbott & Smith and N. D. Denson.

Your petitioner alleges, that said solicitors named, prosecuted said cause to final decree, and that his counsel fees are a charge on the trust property, as a part of the expenses of said cause, and that he should have decree taxing the same thereon over and above the principle and

interest due on the bonds secured by the mortgage, and over and above the ordinary costs.

Petitioner alleges, that his solicitors should be paid the sum of $7,500.00, and prays a decree, in his favor for the benefit of said solicitors taxing said sum as a part of the costs of the cause, as between solicitors and client.

Wherefore he prays an order be passed requiring the defendants to show cause on the 2d day of April prox at 10 o'clock A. M., why a decree should not be entered in the cause taxing said sum as a part of the costs of administration.

And your petitioner will ever pray.

DORSEY, BREWSTER & HOWELL
ABBOTT & SMITH,
N. D. DENSON,
Solicitors for Plaintiff.

It is ordered that defendants show cause before me on Saturday the 2d of April 1892, why the prayer of the above and foregoing petition should not be granted.

In open court, March 31st, 1892.

WILLIAM T. NEWMAN,
United States Judge.

Due and legal service of the within petition order of the chancellor acknowledged. Copy waived.

This 31 March 1892.

N. J. & T. A. HAMMOND,
Attys. for Defts. as pr Record.

Filed in clerk's office, 20 day of May, 1892.

O. C. FULLER, *Clerk.*

Answer of Defdts to Petition to Tax Counsel Fees.

Bill for Foreclosure etc. In the Circuit Court of the United States, for the Northern District of Georgia.

J. J. ROBINSON, TRUSTEE
vs.
ALA. & GA. MFG. CO., ET AL.

In answer to the order to show cause why a decree should not be entered in said cause taxing said sum of

$7500.00 as part of administration, defendants through their counsel undersigned show cause as follows:

1.—There is nothing in the pleadings or facts of said case, as the same appear of record in said court which will authorize or justify any charge upon the property which was mortgaged, over and above the principal, interest, and such costs as belong to the cases ordinarily in court, exclusive of counsel fees.

2.—Under the records and facts disclosed aforesaid, counsel fees for the complainant can only be taxed upon the fund which shall be brought into court under said decree.

3.—Until said fund is in court, and the parties who intend to participate therein are known and brought before the court, the quantum of fee can not be properly fixed, because the same must come out of said fund.

4.—These defendants if right in the foregoing positions, have no interest whatever in the fees of complainants solicitors. If they have they submit that the amount charged, to wit, $7,500.00 is excessive and exhorbitant. The services rendered are worth no such sum.

Defendants therefore pray that the court shall dispose of this motion on demurrer covered by the first three grounds of this answer, and afterward, if it be necessary, refer the Amount of compensation to a master, who will take testimony and report concerning the same to the court.

N. J. & T. A. HAMMOND,
Attys for Defts as pr record.

Filed in clerk's office April 4, 1892.

O. C. FULLER, *Clerk.*

Let this paper be considered as now filed. Service of copy acknowledged. This 4th April 1892.

ABBOTT & SMITH,
DORSEY, BREWSTER & HOWELL,
Sols. &c.

Demurrer sustained on the ground that plffs. counsel have no right to their fees to be taxed against defendants.

Their rights to such fees must be put upon the fund raised under the decree.

This 25 May, 1892.

WM. T. NEWMAN,
U. S. Judge.

Filed in clerk's office 25 day of May, 1892.
O. C. FULLER, *Clerk.*

Order Allowing Pl'ff to Except to Order Sustaining Demurrer and Noting Same.

P.t'n of Pl'ff to tax Sols. fee in said cause. In U. S. Circuit Court Nor. Dist. Ga

J. J. ROBINSON, TRUSTEE,
vs.
ALA.& GA. MFG. CO., ET AL.

The exception of plff. to the decision of the court sustaining the demurrer to the petition is hereby noted on rendition of decision of the court and at the time for the filing of the same and leave given to except as provided by law and rules of practice.

This 30 May, 1892.

WM. T. NEWMAN, *U. S. Judge.*

Filed in clerk's office, 30, day of May, 1892.
O. C. FULLER, *Clerk.*

Opinion of the Court on Petition to Tax Counsel Fees.

In United States Circuit Court, Northern Dist. of Georgia.

J. J. ROBINSON, TRUSTEE,
versus
ALABAMA & GEORGIA MFG. CO. ET AL.

In this case a final decree of foreclosure has been directed in favor of complainant and the court is now asked to determine the question of an allowance for counsel fees for legal services rendered on behalf of Robinson, trustee.

The petition to this end filed by complainant, prays that reasonable counsel fees may be allowed against the

defendant, and taxed as a part of the costs in the case. There is no provision in the trust deed for the payment of counsel fees in case of a foreclosure in court. There is a provision for the payment of the expenses of the trustee in the event he entered upon the property and sold the same as provided in the trust deed. The provision for the payment of expenses would probably include reasonable counsel fees if the trustee had proceeded in that manner to execute that trust, but he filed his bill in court for a regular decree of foreclosure. The property embraced in the trust deed having been sold by a receiver in a former proceeding, however, and the property purchased by third parties, the proceeding in court, it is suggested, was considered a necessity, and it probably was! The court is called upon now to determine whether or not the fees of a counsel representing the trustee shall be taxed against the defendant in addition to the principal and interest of the bonds and the ordinary costs in the case, the application to have counsel fees thus attached, being strenuously resisted by defendant.

Quite a number of authorities have been cited both for and against this application, and by both sides; but the main reliance of defendant is upon a decision of the Supreme Court in the case of Fowler v. Equitable Trust Company, 141 U. S., 384, and that of complainant upon a recent decision of the Supreme Court, in the case of Dodge et al. v. Tulleys, trustee, et al. (decided April 11th, 1892, and published in advance sheets No. 6). In the case of Fowler v. Equitable Trust Co., there was a provision in the trust deed very much like the provision in the deed in this case. It provided for an allowance in case of sale by the trustee at public auction upon advertisement, of all expenses, etc., and there was a proceeding in court to foreclose the mortgage and a decree. The proceeding to foreclose was instituted by the holders of the bonds as appears from the report of the case, and not by the trustee, and it was held that fees of solicitors for complainant could not be recovered against the defendant. The only difference between that case and the case now before the court is, that the proceeding was there instituted by the holders of the bonds and not by the trustee, and it is contended that that is very material in considering

its weight as authority here. It seems from a sentence in the opinion, that the reason for that suit being brought by the holders of the bonds and not by the trustee, was a refusal of the trustee to act, and that this was urged as an additional reason for the allowance of counsel fees. The language of the court, so far as material to the question in consideration is as follows:

"The trust company insist that the decree should have made to it an allowance for solicitors fees. There is no foundation for this claim. The trust deed provides that in the case of a sale by the trustee, at public auction upon advertisement, all costs, charges and expenses of such advertisement, sale and conveyance, including commissions, such as were at the time of sale allowed by the laws of Illinois, to sheriffs on sale of real estate on execution, should be paid out of the proceeds. This provision does not impose upon the borrower the burden of paying to the lender a solicitor's fee where suit is brought for foreclosure. The commissions referred to in the deed are allowed only where the property is sold upon advertisement by the trustee without suit. The trust deed made no provision for a solicitor's fee to the company in the event suit was brought. That a suit became necessary because of the refusal of the trustee to act, is no reason for taxing such a fee against the mortgagor."

As stated, the only difference between that case and the case under consideration is that in this case the trustee brought suit for foreclosure. If a trustee may recover from the defendant his expense for counsel fees in a case like this, why in the event the trustee refuses to act, and it becomes necessary for the holders of the obligations secured by the trust deed to employ counsel themselves to enforce the trust deed, should they not have the same right? In the one case the trustee employs counsel to collect the debt of his *cestui que trust*, and in the other the beneficiaries employ counsel to represent themselves and enforce the trust deed, and it would be very difficult to find any distinction in principle between the rights in the two cases.

The case of Dodge et al. v. Tulleys et al., it is earnestly urged controls the question here, whatever effect may be given the

Fowler case just discussed. That was a suit brought (in the Dodge case) by a trustee to foreclose a mortgage securing certain indebtedness, and there was an allowance to counsel of complainants a fee of one thousand dollars. The Supreme Court reduced the fee by one half, but held that it was properly taxed. The language of the court, as appears from the advance sheets of the decision, so far as it is necessary to cite here is as follows:

"The remaining proposition of appellants, is that the court erred in allowing a solicitor's fee of $1,000. There is a stipulation in the trust deed for the payment of an attorney's fee of one thousand dollars, in case of foreclosure, but such stipulations have been held by the Supreme Court of Nebraska to be unauthorized. Dow v. Updike, 11 Neb. 95; Hardy v. Miller, 11 Neb. 395. It seems that in 1873 an act passed the Legislature of Nebraska expressly authorizing in any written instrument for the payment of money a stipulation for not exceeding ten per cent. as attorney's fee in case of suit. Neb. Gen. Stats. 98. This act was repealed in 1879. Laws of Neb 1879, p. 78. In the cases cited, the Supreme Court of the State held that by the repeal of the statute the contract right to recover attorney's fees was taken away. So, as this court follows the decision of the highest court of the State in such matters. (Bendey v. Townsend, 109 U. S. 665 [27:-1065]), the provisions in the trust deed for the payment of $1,000 as attorney's fees can not be regarded as of binding force. But while contract rights are settled by the laws of the State, that law does not determine the procedure of courts of the United States sitting as courts of equity, or the costs which are taxable there, or control the discretion exercised in matters of allowances. Those courts acquire their jurisdiction and powers from another source than the State. There is no statute of Nebraska in respect to the matter. Even if there were one expressly prohibiting courts of equity from making allowances to trustees or their counsel, such prohibition will not control the proceedings in Federal Equity Courts. They proceed according to the general rules of equity except so far as such rules are changed by the legislation of Congress. and while they may enforce special equitable rights

of parties given by State statutes. (Hollen v. Challen, 110 U. S. 15 [28: 52]), yet their general powers as courts of equity are not determined and can not be cut off by any State legislation. It is the general rule of equity that a trustee called upon to discharge any duties in the administering of his trust is entitled to compensation therefor, and included therein is a reasonable allowance for counsel fees. This is constantly enforced in the Federal courts in the various railroad foreclosures that have been and are proceeding therein; and this, irrespective of any State legislation. The subject was exhaustibly considered by Mr. Justice Bradley, in the case of Internal Imp. Fund Trustees v. Grennough, 105 U. S., 527 (26: 1157). The English and American authorities were fully reviewed, and the power and duty of the court to make reasonable allowances (including counsel fees) to trustees or others acting in that capacity was affirmed. See also Central R. & Bkg. Co. v. Pettus, 113 U. S. 116 (28: 915). It is unnecessary to more than refer to these decisions. In the case before us, a trustee comes into a court of equity and asks its aid in enabling him to discharge the duties of his trust, and according to the settled law of this court, he is entitled to an allowance for reasonable counsel fees. But we think $1,000 is too much. Indeed, in the bill of complaint, the trustee alleges that $500 is a reasonable attorney fee for the foreclosure of the first deed; and we think that under the circumstances no more should be allowed."

It is true, certainly, that the court in this case sustained the court below in taxing the counsel fees of the trustee in a case like this, and held that it was in the general powers of the Federal courts to do what was done there. But I do not understand the case to go to the extent contended for by counsel for complainant here. They contend, as I understand them, that the rulings in that case is, that it is the right of the trustee in a case like this to recover his counsel fees against the defendant,—that is, that it was a matter of right to have counsel fees so taxed. I do not so understand the decision. The court below had taxed complainants counsel fees against the defendant, and the Supreme Court, for reducing the amount of the fee simply affirmed this, and placed it upon the general powers of the Federal court to tax the

costs in the case. There is nothing whatever in the decision to justify the contention that the court there decided that the trustee, as a matter of right, should have counsel fees taxed against the defendant in a case like this.

The court having this opinion as to the general effect of the decision cited, it may next be considered whether it is a case in which the court, in its discretion, will cause the fees of counsel for complainant to be taxed against defendant. This bill was filed because of non-payment of interest which, under the contract, gave the right to foreclose, and a serious question was made by the pleadings and the proof in the case as to whether or not the right to foreclose existed at the time the bill was filed, but the court sustained this right and directed a final decree. No right can be claimed here in this respect because of any liability incurred by the trustee in the performance of his duties, because, it appears from the evidence in the case, that the trustee required an agreement that he should not be responsible for counsel fees before he would allow the use of his name in the suit; and the case has really more the appearance of the holders of these obligation proceeding through the trustee, as a mere nominal party, than the act of the trustee, in the discharge of the duty incumbered upon him by virtue of a trust which he had assumed and agreed to carry out. Again, the property covered by this trust deed was placed in the hands of a receiver of the State court in a proceeding against the Ala. & Ga. Manufacturing Company, and by a decree of that court was sold—and is now the property of the Huguley Manufacturing Company, who hold the property subject to this mortgage under the the terms of that purchase at the receiver's sale. There is nothing whatever in this contract, as has been stated, providing that counsel fees of complainant should be paid in the event of a foreclosure in court, and if the same should be taxed here against the defendant, it would be increasing the amount of the mortgage to that extent in the absence of a provision in this trust deed for counsel fees, and the law requiring it be taxed it would be placing the burden on the purchasers of this property, which they did not assume and cannot be held to have assumed when they bought the property at the receivers sale.

The conclusion is, that this is not a case where the court is required by law to tax counsel fees of the complainant against the defendant, and in the absence of any such requirement, and considering the question under the general rule applicable in courts of equity, such a case is not made, as the court would, in its discretion, give it that direction. But the court will leave the matter of compensation of complainants solicitor's open until the fund is brought into court derived from the sale of the property under the decree which has been directed and will then make such order for the payment of counsel fees and for such an amount as may be proper.

An order may be taken sustaining the demurrer upon the ground above stated.

This May 27th, 1892.

WILLIAM T. NEWMAN,
U. S. Judge.

Filed in clerk's office 30 day of May, 1892.
O. C. FULLER, *Clerk.*

Final Decree.

In the Circuit Court of the United States for the Northern District of Georgia. March Term, 1891.

J. J. ROBINSON, TRUSTEE,
vs.
THE ALABAMA & GEORGIA MANUFACTURING CO. ET AL.
No. 360.
In Equity.

This cause came on to be heard, at the present term, and was argued by counsel, and upon consideration thereof, it is ordered, adjudged and decreed as follows :—

1. That the plaintiff, J. J. Robinson, as trustee for the holders of the bonds and coupons of the Alabama & Georgia Manufacturing Company, one of the defendants herein, do recover of and from said Alabama & Georgia Manufacturing Company the sum of sixty-five thousand ($65,000.00) dollars principal, due on one hundred and thirty bonds of said company, secured by deed of trust covering the property hereinafter described, and the sum of dollars due on the unpaid coupons on said bonds and the sum of dollars interest due on said coupons,

said amounts to be ascertained by the special master to be hereafter provided for and the further sum of
dollars, as costs, said costs to include one hundred and twenty dollars to be paid to counsel for commissioners fees for taking testimony, in lieu of statutory commissioners fees.

2. It is further ordered, adjudged and decreed that said Alabama & Georgia Manufacturing Company shall pay, or cause to be paid, said several sums recovered against it in the first paragraph of this decree, on or before the 1st day of July, 1892, in default whereof the property covered by said trust deed fully set out in the plaintiffs bill, and hereinafter described, shall be sold as hereinafter provided, and all equity of redemption in and to said property and premises, and every part thereof, shall be and the same is hereby barred and forever foreclosed.

3. It is further ordered, adjudged and decreed that if the said Alabama & Georgia Manufacturing Company shall fail to pay or cause to be paid into court said sums as provided in the preceding paragraph, then Alfred E. Buck as marshal of this district shall proceed to sell at public outcry, within the legal hours of holding sheriff's sale on the first Tuesday in September, 1892, before the court-house door in Fulton County, Georgia, to the highest and best bidder after having previously advertised for (30) thirty days in the following named public gazettes published in the city of Atlanta, to-wit, the Atlanta *Constitution* and the Atlanta *Evening Journal*, all and singular the following described real and personal property to-wit:

"All of a large island in the Chattahoochee River designated as island number six, containing one hundred and forty-three (143) acres, more or less; also island number nine, containing seven (7) acres, more or less; also a small island between islands numbers nine and six, upon which the east end of the factory building rests, containing four acres more or less; all of the three above described islands being in the twentieth (20) district of Harris county, Geo[illegible]a; also all that tract or parcel or land, lying on the wes[illegible]de of the Chattahoochee river opposite the above descr[illegible] island, bounded on the east by said river, beginning at a point on the west bank of said river nearly opposite the centre of the seven acre island, at a black gum, at or near a place known as Sells' corner, thence

a straight line to a point where the land owned in 1868 by Mrs. Freeman, Job Ross and James Campbell join, known then as Ross and Freeman corner to a pine stake, thence a line to a branch near said stake, thence a line down said branch to said river, and thence down the western bank of the river to the beginning point, containing sixty-five and twenty-three one hundredths (65.23) acres more or less, lying and being in Chambers county, of the State of Alabama, and being part of section twenty-eight and twenty-nine (28 & 29), township twenty-one (21), range twenty-nine (29), as well as a forty foot right of way from the factory building to the public road leading from West Point, Georgia to Berlin, Alabama, at any point where the factory company may locate it, including all tenements and improvements including the cotton mill, and all the machinery therein, or thereto belonging, and all water privileges and raparian rights, now (or hereafter) owned and enjoyed by the said Alabama & Georgia Factory."

4. It further ordered, adjudged and decreed that said commissioner shall require a cash payment from the highest and best bidder at the sale at the time said property is knocked down to said bidder, of ten thousand ($10,000) dollars. Any balance on the bid that may be due after paying said sum of $10,000 may be paid in said first mortgage bonds or second mortgage bonds as cash, in the proportion that such bonds would be entitled to share in the proceeds of the sale on distribution; said bonds to be delivered into court for credit or cancellation, according as they may be paid in part or wholly. Said balance, must be paid in ten days after the sale.

5. Said marshal shall report said highest bid and payments of cash and of bonds, if any is paid in bonds, back to this court, and on confirmation of such sale and the payment of the balance as herein allowed or in cash, said marshal shall execute good and sufficient conveyance of the title of the said property to such purchaser.

6. It is further ordered, adjudged and decreed that the defendants, the Alabama & Georgia Manufacturing Company and the Huguley Manufacturing Company, shall surrender to the purchaser the mortgaged property sold and conveyed, upon the execution, approval and delivery of the marshal's deed thereto; and, as further assurance, shall, on the approval and

delivery of said marshal's deed convey their title to all the property therein described to said purchaser, and deliver up all the prior deeds to the same in their possession.

7. It is further ordered, adjudged and decreed that at said sale the one hundred second mortgage bonds issued by the Huguley Manufacturing Company to the St. Louis Trust Company as trustee, or any part of them issued under said second mortgage to St. Louis Trust Company as trustee, shall be accepted as payment on account of purchase as to any excess over the amount of said first mortgage bonds of said Alabama & Georgia Manufacturing Company and their interest and the costs of suit.

This shall not interfere with the requirements to pa s $10,000 in cash however. Should there remain still a balance in the hands of the said marshal after the payment first of all sums due on said first mortgage bonds, principal, interest and costs as aforesaid, and after paying to said the St. Louis Trust Company as trustee the said second mortgage bonds, principal and interest, which are hereby ordered to be so paid, as being a second lien on said property—said balance shall be paid to said Huguley Manufacturing Company or its attorney of record.

8. All questions relating to the compensation of the master, marshal for sale and complainant's solicitors out of the fund brought into court, are reserved for determination on distribution thereof.

9. Either party may except to this decree or to any part thereof.

In open court this 30th day of May 1892.

WM. T. NEWMAN,
U. S. Judge.

Now at the signing of this decree and before and when it is signed come said defendants and except to this said decree on the ground that under the pleadings and evidence in the decree is wrong, the bonds of Ala. and Ga. Mfg. Co., not being due as alleged by plff. trustee and for other reasons apparent on the record.

This 30, May, 1892.

N. J. & T. A. HAMMOND,

Noted and ordered filed May 30, '92.

WM. T. NEWMAN,
U. S. Judge.

Filed in clerk's office 30 May, 1892.

O. C. FULLER, *Clerk.*

Order Noting Exceptions of Defendants.

J. J. ROBINSON, TRUSTEE *vs.* ALABAMA & GA. MFG. CO., ET AL. } Final Decree, May 30, 1892.

And now comes the plaintiff by his solicitors and on the rendition of said decree and before the filing of same prays leave to except to the same within fifteen days from date hereof and that said exception be noted by the court and ordered filed.

This 30 May, 1892.

WM. T. NEWMAN,
U. S. Judge.

The like privileges as above granted to the defendants.

WM. T. NEWMAN,
U. S. Judge.

Filed in clerk's office 30 day of May, 1892.

O. C. FULLER, *Clerk.*

Opinion of the Court.

In the Circuit Court of the United States, Northern District of Georgia. In Equity. Bill to Foreclose Mortgage.

J. J. ROBINSON, TRUSTEE, *vs.* ALA.& GA. MFG. CO., ET AL.

On the 1st day of January 1884, the Alabama & Georgia Manufacturing Company issued $65,000 of bonds in the denomination of $500 each payable to bearer with eight per cent. interest thereon; interest payable by

semi-annual coupons attached to each bond. On the same day the company executed a mortgage or deed of trust to J. J. Robinson, W. C. Yancey and W. T. Huguley as trustees, covering the property of the company for the pnrpose of securing said issue of bonds. The language of the trust deed so far as it is necessary to quote from the same, is in these words: "To provide for the payment of the bonds aforesaid and the interest thereon at the time and place when and where the same shall respectively fall due and payable, the said J. J. Robinson, W. C. Yancey and W. T. Huguley, or a majority of them, or their survivors and successors, are hereby authorized and empowered should default be made in the payment of said bonds when they fall due, or in the payment of the interest on said bonds as it shall accrue, then immediately on such default being made known by the holder or holders of said bonds, the holder or holders of said coupons attached thereto, and if after notice is served upon the president of said company the same shall remain unpaid for six months after such default shall have been made in the payment of said interest or principal, as the case may be, and at the request of any one or more of the holders of said bonds or coupons and without any other or further authority from the said Alabama & Georgia Manufacturing Company, upon giving sixty days notice of the time and place of sale together with the description of the property in a newspaper published in the cities of Atlanta, LaGrange and West Point, Georgia, to proceed to sell at public auction at the office of said company in the city of West Point, Georgia, for cash, the property herein conveyed or a sufficient amount of the same to pay the amount due and apply the proceeds of the sale, etc." The bonds were disposed of and the trust deed delivered and duly recorded. In the year 1888, a bill in equity was filed in the State courts by other creditors, and a receiver appointed for the factory property named, who, after holding the same for a short time, sold the property by order of the court, the sale being made subject to the bonds and mortgages before alluded to. The purchasers at this sale afterwards organized themselves into what was known as the Huguley Manufacturing Company. On the 21st day of January 1891, J. J.

Robinson filed a bill in this court against the Alabama & Georgia Manufacturing Company, the Huguley Manufacturing Company and W. T. Huguley. W. C. Yancey was dead at the time the bill was filed and W. T. Huguley was interested in the Huguley Manufacturing Co. and his interest being adverse to the trustees Robinson brought the suit alone. This proceeding by Robinson alone was sustained by this court in a decision rendered on demurrer to the bill at the spring term 1891, with Mr. Justice Lamar and the present presiding judge on the bench.

The ground for foreclosure of this trust deed as set out the bill is the non-payment of the coupons maturing July 1st, 1890, and continued default for six months thereafter. The language used in each of the bonds so far as is material to this question is as follows: The Alabama & Georgia Manufacturing Company hereby acknowledges itself indebted for value received to the bearer hereof in the sum of five hundred dollars in lawful money of the United States to be paid at the office of the company in West Point, Georgia, on the first day of January, 1904, with interest at the rate of eight per cent. per annum, payable on the first day of January and the first day of July of each year until the said principal shall be fully paid, on the presentation of the annexed coupons as they respectively become due. And it is hereby expressly agreed by said company, with each and any holder of this bond, that in case of the non-payment of any interest coupon hereto attached, if such default shall continue for six months after maturity and demand of payment, the principal of this bond shall become immediately due and collectable."

The defence to this proceeding is, that there was not such default in the payment of the July, 1890, coupons as authorizes a decree of foreclosure. It is not questioned that the Huguley Manufacturing Company, the present owner of the property, has the same right to six months after failure to pay coupons at maturity, that the Alabama & Georgia Manufacturing Company would have had, before suit could be commenced to foreclose for the principal of the debt and accrued interest. It appears that as to two or three series of coupons maturing prior to the July, 1900, series, advantage had been

taken of almost the whole, and certainly of the larger part of the six months allowed by the contract within which to pay; even during the time that the property was in the hands of the receiver of the State court this seemed to have been the case. The bonds and also the coupons were made payable on their face at the office of the company at West Point, Georgia. In July, 1890, it is conceded that neither the Alabama & Georgia Co., or the Huguley Manufacturing Co., the present owners of the property, had an office in West Point. It appears that the coupons paid by the recent owners of the property since its ownership, were paid with money deposited by the officers of the company in the Atlanta National Bank at Atlanta, Georgia, but actual payment of the greater part was at West Point, Ga., and through L. Lanier & Co., who are bankers at that place. On the 1st of July, 1890, no money was provided at either of the banking establishments or elsewhere, as far as the proof shows, for the payment of the coupons maturing at that time. Presentions of the coupons and request for payment at that time clearly would have been fruitless. The facts relied on to relieve defendants of default in the payment of the coupons as follows: The treasurer, who resides in St. Louis, Mo., by direction of the president, who resides at the same place, on the 29th of December, 1890, mailed in the post office at St. Louis, a letter enclosing a draft for $2,678.00 to the Atlanta National Bank of Atlanta, Ga., aud enclosing a letter asking that the same be used in the payment of these coupons and he also mailed at the same time to the Atlanta *Constitution*, a newspaper published in Atlanta, Ga., a letter enclosing an advertisement to be inserted in that paper informing all the holders of the July, 1890, coupons that the same would be paid on presentation at the Atlanta National Bank. It appears from the evidence that a lettter mailed in St. Louis on the 29th, of December in time to catch an evening mail, as this letter was would reach Atlanta in due course on the evening of the 30th inst., and should be in the office of any business establishment in Atlanta, on the morning of the 31st at least, the evidence of the officers of the bank is that the letter was not opened in the bank and the remittance was not entered on its books until January 2d. The fact that January first was a legal holiday

day, and the banks were closed on that day and no business of any kind transacted, accounts for that day's delay, but the fact that the remittance was not received on the 31st of December is not accounted for except by delay in transmission. The evidence as to when the Atlanta *Constitution* received its letter is somewhat indefinite, but the advertisement was not entered on the books until the first, and the advertisement appeared in the paper the morning of the second. On the 2d of January the cashier of the Atlanta National Bank telegraphed to L. Lanier & Co. at West Point, authorizing them to pay January, 1890, coupons of this company, and ascertaining his error as to the series of coupons to which the money deposited was to be applied, he, on the next day, the third, telegraphed L. Lanier & Co. to pay July, 1890, coupons. There was considerable evidence pro and con upon each matter connected with this last transaction. L. Lanier, of the West Point banking firm, owned or controlled $35,000 of the bonds and the coupons thereon, and he declined to receive the money for his coupons, as did nearly all the holders of the same, and Robinson, as trustee, was requested by holders of $50,000 of bond to commence foreclosure proceedings, having notice that said holders of bonds elected to treat the entire debt a due. As has been before stated, on the 21st of January, 1891, this bill was filed. The answer sets up the defence as before stated, and the case is now heard for a final decree.

It is claimed—

1. By the defendants that the resolution of the stockholders authorizing the issuance of these bonds gave no authority to the officers of the company to insert in the bonds the provision for the entire debt to become due on default in payment of semi-annual interest. The contention is, that such provision must be specially authorized to justify its insertion in the bonds and mortgage. Reliance on this point is placed mainly on the case of Jessup v. City Bank of Racine, 14 Wisconsin, 331, where the ruling of the court was to that effect. Also Jones on Mortgages, Sec. 76, 1182. The ground for the Wisconsin case referred to seems to be that the provision for non-payment of interest authorizing the creditor to

treat the whole debt as due and recoverable, is such an unusual one that it will not be presumed to have included in the general authority to issue bonds and execute a mortgage. If this be the reason, the ruling now should be otherwise, for it is a matter of common knowledge that these provisions are almost universally inserted, and have been for several years, in all securities of this kind. But even if this be a valid objection when properly made, and it is not so considered, can the Huguley Manufacturing Company insist upon it, or set it up as a defence in this suit? Very clearly not. They purchase the property covered by the mortgage, subject to the mortgage and the debt which it secures. The fact of the existence of this mortgage as a valid subsisting lien, and for the amount expressed therein, was evidently considered in fixing the price to be paid by the Huguley Manufacturing Company for the property. By purchasing this property subject to this debt and thereby having the price reduced to that extent, they are clearly estopped from subsequently setting up the invalidity of the instrument securing the debt and from contesting terms. They thereby assumed the mortgage in its entirety. As to whether or not the officers of the Alabama & Georgia Manufacturing Company exceeded the powers given them in the resolution of the stockholders, was a matter in which the stockholders of the company alone were interested, and they have ceased to have interest therein by the sale of the property and its purchase by the Huguley Company. Without referring to other authorities it is sufficient to cite the case of Bronson v. Lacross Railroad Company, 2 Wallace 283. In the opinion in that case,—page 311, this language is used: "And especially, what right have the Milwaukee and Minnesota Company to complain, who purchased the equity of redemption through Barnes their agent, subject to the previous encumbrances of $1,000,000. They have the benefit of that incumbrance by an abatement of that amount in the price of the purchase." The position of defendant on this question cannot be sustained.

2.—It is insisted in the next place that the Huguley Manufacturing Company was entitled to the three days of grace allowed on commercial paper in the payment of these coupons, and that consequently the six months allowed for payment by

the contract, commenced to run on the fourth day of July, or as the fourth day of July was a legal holiday in Georgia, not earlier than the third. Not considering for the moment the rule in Georgia, there is authority in favor of the view that the coupons attached to bonds like these are entitled to three days of grace it seems to be so held in New York. See Cooper v. Town of Thompson, 13 Blatchford; Evertson v. National Bank of New York, 13 Albany Law Journal 350. But there is conflicting authority on this question. McLoon v. Smith 49 Wis. 200; National Bank of North America v. Kirby, 108 Mass. 497; Chafee v. Railroad Company, 146 Mass. 224. So it can hardly be said that there is such a general and uniform rule of commercial law in favor of the allowance of days of grace on coupons, such as these, as would justify the court in ignoring the established rule in the State of Georgia, where this transaction occured. These bonds were issued in Georgia and payable in the same State, and the property on which the lien was given to secure them is in Georgia, and if there is a well established rule in the State on this subject it should control. Section 2784, Code of Georgia, is as follows: "The three days generally known as 'days of grace' and by custom allowed on papers payable at banks or broker's office, shall not be allowed on any bill or draft payable at sight." In the case of the Dalton City Company v. Haddock, 54, Ga. 584, the rule is stated in the syllabus in these words: "Days of grace are not allowed in Georgia on promissory notes not payable at a bank or brokers' office." Whether this decision is a construction of the statute, does not satisfactorily appear, and at the most, if drawn from the statute, it is only inferential, still it is very clearly stated to be the rule of Georgia on the subject. This court will follow that rule unless it contravenes the generally accepted rule of commercial law on the subject. The authorities do not justify the court in saying there is such a uniform rule outside of Georgia, as would justify the court in adopting it, instead of the law as held in Georgia. These coupon became due therefore on the first day July, and the six months within which the same could be paid to prevent suit commenced to run with that day.

3.—It is an accepted fact in this case that there was no money provided either at the Atlanta National Bank in Atlanta, or at any office in West Point to pay these coupons on the first day of July. This being true, it is clear under the authorities on that subject that no demand need be averred or proved. If the facts show that demand would have been unavailing if made, it is not required. See Shaw v. Bill 95 U. S. 10-14; Rising Fawn Iron Company v Warner, 3 Wood, 525.

4.—When this case was before the court on demurrer to the bill at a former term, it was held that the language of the trust deed as to notice to the president, etc. was only applicable in the event of a proceeding on the part of the trustees to sell the property summarily on 60 days notice, and need not be averred where proceeding was instituted to foreclose.

5.—It is conceded that time is of the essence of this contract, and there must have been payment, or a deposit of money at a proper place to pay these coupons within six months from their maturity. I think it may be conceded that it was the intention of the officers of the Huguley Company to get this money where it could be paid to the holders of the July coupons before the expiration of the six months from July 1st, but their delay in not starting the money from St. Louis until the evening of the 29th of December, as well as the the notice to the coupon holders which was to be inserted in the Atlanta *Constitution*, certainly does not show any great diligence on their part. Very slight delay or irregularity in the mails would be sufficient to prevent either the notice or the money reaching their destination in time to accomplish the purpose of the sender. However, it is a fact that no money was placed by the Huguley Company in the Atlanta National Bank to pay these coupons until the second of January, and no authority was given the bank at West Point to pay the July coupons until the third. Now it is not altogether certain that the six months allowed by this contract did not expire with the 31st of December, but even if it be held to have included the first of January, these coupons were not paid on that day and no effort made to pay them on that day. It could hardly be held that the fact that it was a legal holiday would give another day, and if that

would have any effect at all, it would seem to require the money should be at a proper place on the preceding day to pay these coupons. Now the position assumed for the defendant seems to be that some diligence was required on the part of the holders of these coupons to ascertain if the money was at any place where they might reasonably expect it to be, and that it was their duty to some extent to apply for the money. No such diligence or effort on the part of the coupon holders is justified under a proper view of this contract. As affecting the duty of the coupon holders at the time of the original maturity of the coupons, such a rule might very properly be invoked : and if the proof had shown that the money was at any place to pay these coupons when they became due where the holders might reasonably expect to have received it, that would unquestionably be sufficient to defeat any proceeding to foreclose. But after failure to provide funds to pay coupons at the time of maturity, then it would seem to be the duty of the Huguley Company to use diligence on their part to get the money within the six months into the hands of the coupon holders. It is not necessary to go to the extent contended for here that the company must hunt them up and seek them out, but it certainly is true that they the Huguley Company, must have used diligence to provide this money at such place within the six months, and that such notice thereof be given to holders of the coupons as a fair degree of diligence on their part would require. The duty of the holders of the coupons so far as the exercise of any diligence on their part was concerned, was ended with the failure to pay at the original maturity, and thereafter the burden as to diligence was changed and was on the officers of the Huguley company. Even if the money to pay these coupons had been in the Atlanta National Bank on the 31st of December, it is not satisfacorily shown that the bondholders were put on such notice actual, or by previous payment there, as would cause them to look to this bank as the place of payment of the coupons. There is not enough in the evidence to show that they could have fairly expected their coupons to be paid if they had sent them there, and it is entirely clear from the evidence that no money was available even at that bank to pay them until the second

of January. Now if it be true that it was the duty of the bondholders to have their coupons where there was at most only a probability of their being paid, on about the last day allowed for payment, and the court is not prepared to so hold even then, they would not have received their money on their coupons until the second of January.

6.— If a court of equity would in any case relax the strict rule which must necessarily obtain in a case like this, where time is of the essence of the contract it would be where a more favorable showing is made for the defendants than has been bronght out by the evidence here. The property was purchased by the Hnguley Company in January 1890, and the January 1890 coupons which it is assumed in the purchase, were not paid until June 1890, and as has been stated, the beginning of the effort to pay July coupons was by starting the money from St. Louis on the 29th of December.

The failure to pay these coupons at maturity must necesarily have an unfavorable effect on the value of the bonds and it is not unreasonable that the holders of the bonds would ask a strict construction of their contract. Notwithstanding the very forcible and able presentation of this case for defendant, the court is unable to see any sufficient reason to justify it in declining to allow a foreclosure of this mortgage as prayed for.

The conclusion is, that the complainants are entitled to a decree of foreclosure in accordance with the prayer in their bill.

WILLIAM T. NEWMAN,
United States Judge.

Filed in clerk's office 23 day of March 1892.
O. C. FULLER, *Clerk*

Petition for Appeal and Order Allowing Same.

Bill to Foreclose Mortgage. In the Circuit Court of the United States for the Northern District of Georgia.

J. J. ROBINSON, TUSTEE,
Plaintiff

vs.

ALABAMA & GEORGIA MFG. CO. AND HUGULEY MFG. CO.,
Defendant and Appelants.

The above named defendants, the Alabama & Georgia Manufacturing Company and the Huguley Manufacturing Company, conceiving themselves aggrieved by the decree foreclosing said mortgage entered on the 30th day of May, 1892, in the above proceeding, do hereby appeal from said decree to the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, and pray that this their appeal may be allowed, and that a transcript of the record and proceeding and papers upon which said decree was made, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Fifth Circuit, at New Orleans, Louisiana.

N. J. & T. A. HAMMOND,
Sols. for Appellants.

U. S. Circuit Court, Northern District of Georgia.

Now, to wit on the 28th day of July, 1892, it is ordered that the appeal be allowed as prayed for.

WM. T. NEWMAN,
U. S. Judge.

Filed in clerk's office 28th day of July, 1892.

O. C. FULLER, Clerk.

Citation.

United States of America.

The President of the United States, to J. J. Robinson, trustee—Greeting: You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the Northern District of Georgia, wherein you as trustee are plaintiff and the Alabama & Georgia Manufacturing Company and the Huguley Manufacturing Company defendants are appellants, to show cause if any there be, why the decree rendered against the said appellants as in said decree mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

This the 28th day of July, 1892.

WM. T. NEWMAN,
U. S. Judge.

Due and legal service of this citation acknowledged and copy waived.

This July 28, 1892.

DORSEY, BREWSTER & HOWELL,
ABBOTT & SMITH,

Sols for Plff.

Filed in clerk's office 28 day of July, 1892.

O. C. FULLER, Clerk.

Order as to Supersedeas Bond.

Bill in the Circuit Court of the United States for the Northern District of Georgia.

J. J. ROBINSON, TRUSTEE,
versus
ALABAMA & GEORGIA MANUFACTURING COMPANY

It being represented to the court now in session that the defendant in said cause intend to appeal said case, it is ordered that when said appeal shall be applied for and a bond shall be given in the terms of the law in such cases provided, in the sum of ten thousand dollars ($10,000), the judgment of this court in said cause shall be superseded until the return of the remittitur from the Appellate Court. July 4, 1892.

WM. T. NEWMAN,
U. S. Judge.

Filed in clerk's office 4th day of July, 1892.

O. C. FULLER, Clerk.

Assignment of Error.

Bill for Foreclosure of Mortgage. In the Circuit Court of the United States for the Northern District of Georgia.

J. J. ROBINSON, TRUSTEE, *Plff.*
versus
THE ALA. & GA. MFG. CO. AND HUGULEY MFG. CO., *Defts. and Appts.*

Now comes the said Alabama & Georgia Manufacturing Company and the said Huguley Manufacturing Company, who appeal from the decree of foreclosure in said

cause, and with their said appeal file the following assignment of error:

1st. That the court erred in overruling the demurrer to the bill of the said J. J. Robinson filed in said cause. Said demurrer should have been sustained, upon each and every of the grounds therein mentioned.

2d. That the court erred in granting the final decree foreclosing the mortgage against the said property of the Alabama & Georgia Mnfg Co., specified therein, because under the evidence there was no such default as would justify such foreclosure.

3d. That the court erred in holding that there was in July, 1890, no office of the Alabama & Georgia Mnfg Co., at West Point, Ga., to which holders of bonds should have made application for payment thereof. Appellants claim that the evidence shows that there was such office there at that time.

4. That the court erred in holding that the actual payment of the coupons mentioned in his opinion had been made at West Point, Ga., through W. C. & L. Lanier, bankers at that place, because the evidence shows that the payments there mentioned were actually made at the Atlanta National Bank, and that W. C. & L. Lanier simply took up the coupons, as any other person might have purchased them, and forwarded the same to the Atlanta National Bank for payment.

5th. The court erred in holding that the resolution of the stockholders authorizing the issuance of the bonds gave authority to the officers of the company to insert in the bonds the provision for the entire debt to become due on default in the payment of the semiannual interest, such provision not being specifically made in the resolution.

6th. The court erred in holding that the Huguley Manufacturing Co. was under the evidence in the case estopped from subsequently setting up that objection to the bonds in this contest, and further, in making that objection the objection of the Huguley Mnfg Co. only, where it was equally insisted upon in favor of the Alabama & Georgia Mfg Co., defendant.

7th. The court erred in holding that days of grace were not to be allowed on the coupons to said bonds, and that therefore the coupons fell due on the 1st day of July, and

that the six months within which the same could be paid to prevent this suit began on that day, instead of the 3d day of July, as appellants claim.

8th. The court erred in holding that under the evidence the bondholders had not accepted the Atlanta National Bank as the place at which they must ask for the payment of their coupons and further, in holding that no money was placed in said Atlanta National Bank to pay these coupons until the 2d day of January, the evidence showing, as appellants contend, that the Atlanta National Bank had been by consent of all parties made the place of payment after the sale of the Alabama & Georgia Mfg Co.'s property, and the evidence also showing, as they contend, that the money to make the payment in question was in said Atlanta National Bank on the first day of January, instead of not until the second as the court held.

N. J. & T. A. HAMMOND,
Sols for Appellants.

Let this assignment of errors be filed with the appeal above allowed.

This 28 July, 1892.

WM. T. NEWMAN,
U. S. Judge.

Filed in clerk's office 28 day of July, 1892.

O. C. FULLER, Clerk.

United States of America,
Northern District of Georgia. ss.

I, O. C. Fuller, clerk of the United States Circuit Court, in and for the Northern District of Georgia, do hereby certify that the following and attached printing and writing is a true, full, correct and complete copy of the original decree on file, and remaining of record in my office in the matter of J. J. Robinson Trustee vs. The Alabama & Georgia Manufacturing Company et al.

In testimony whereof, I hereunto set my hand and seal of the said Circuit Court, at Atlanta, Ga., this the 27th day of July A. D., 1892.

(SEAL) O. C. FULLER, Clerk.
By GEO. S. BARNARD, Deputy Clerk.

Master's Report of Sale.

In the Circuit Court of the United States for the Northern District of Georgia. March Term, 1891.

J. J. ROBINSON, TUSTEE,
vs.
THE ALABAMA & GEORGIA MFG. CO. ET AL.
No. 360.
In Equity.

This cause came on to be heard at the present term, and was argued by counsel, and upon consideration thereof it is ordered, adjudged and decreed as follows:

1. That the plaintiff, J. J. Robinson, as trustee for the holders of the bonds and coupons of the Alabama & Georgia Manufacturing Company, one of the defendants herein, do recover of and from said Alabama & Georgia Manufacturing Company, the sum of sixty-five thousand ($65,000.00) dollars principal, due on one hundred and thirty bonds of said company, secured by deed of trust covering the property hereinafter described, and the sum of ..... dollars due on the unpaid coupons on said bonds, and the sum of..... .....dollars interest due on said coupons, said amounts to be ascertained by the special master to be hereafter provided for, and the further sum of .....dollars as costs, said costs to include one hundred and twenty dollars, to be paid to counsel for commissioner's fees for taking testmony, in lieu of statutory commissioner's fees.

2. It is further ordered, adjudged and decreed that said Alabama & Georgia Manufacturing Company shall pay or cause to be paid said several sums recovered against it in the first paragraph of this decree, on or before the 1st day of July, 1892; in default thereof the property covered by said trust deed fully set out in plaintiff's bill and hereinafter described shall be sold as hereinafter provided, and all equity of redemption in and to said property and premises, and every part thereof, shall be and the same is hereby barred and forever foreclosed.

3. It is further ordered, adjudged and decreed that if the said Alabama & Georgia Manufacturing Company shall fail to pay or cause to be paid into court said sums as provided in the preceding paragraph, then Alfred E. Buck, as marshal of this district, shall proceed to sell at public outcry, within the

legal hours of holding sheriff's sales on the first Tuesday in September, 1892, before the court house door in Fulton county, Georgia, to the highest and best bidder, after having previously advertised for 30 days in the following named public gazettes published in the city of Atlanta, to-wit: the Atlanta Constitution and the Atlanta Evening Journal, all and singular the following described real and personal property, to-wit:

"All of a large island in the Chattahoochee river designated as island number six, containing one hundred and forty-three (143) acres, more or less; also island number nine, containing seven (7) acres, more or less; also a small island between islands numbers nine and six upon which the east end of the factory building rests, containing four acres more or less; all of the three above described islands being in the twentieth (20) district of Harris county, Georgia; also all that tract or parcel of land lying on the west side of the Chattahoochee river opposite the above described islands, bounded on the east by said river beginning at a point on the west bank of the river nearly opposite the centre of the seven acre island, at a black gum, at or near a place known as Sell's corner, thence a straight line to a point where the land owned in 1868 by Mrs. Freeman, Job Ross and James Campbell join known then as Ross and Freeman corner to a pine stake, thence a line to a branch near said stake, and thence in a line down said line down said branch to said river, and thence down the western bank of the river to the beginning point, containing sixty-five and twenty-three one hundredths (65.23) acres more or less, lying and being in Chambers county of the State of Alabama, and being part of section twenty-eight and twenty-nine (28 & 29), township twenty-one (21), range twenty-nine (29), as well as a forty foot right of way from the factory building to the public road leading from West Point, Georgia, to Berlin, Alabama, at any point where the factory company may locate it, including all tenements and improvements, including the cotton mill and all the machinery therein, or thereto belonging, and all water privileges and riparian rights, now (or hereafter) owned and enjoyed by the said Alabama & Georgia Factory."

4. It is further ordered, adjudged and decreed that said

commissioner shall require a cash payment from the highest and best bidder at the sale at the time said property is knocked down to said bidder, of ten thousand ($10,000) dollars. Any balance on the bid that may be due after paying said sum of $10,000 may be paid in said first mortgage bonds or second mortgage bonds as cash, in the proportion that such bonds would be entitled to share in the proceeds of the sale of distribution: said bonds to be delivered into the court for credit or cancellation, according as they may be paid in part or wholly. Said balance must be paid in ten days after the sale.

5. Said marshal shall report said highest bid and payments of cash and of bonds, if any is paid in bonds, back to this court, and on confirmation of such sale and the payment of the balance as herein allowed or in cash, said marshal shall execute good and sufficient conveyance of the title of the said property to such purchaser.

6. It is further ordered, adjudged and decreed that the said defendants, the Alabama & Georgia Manufacturing Company, and the Huguley Manufacturing Company, shall surrender to the purchaser the mortgaged property sold and conveyed, upon the execution, approval and delivery of the marshal's deed thereto and, as further assurance, shall, on the approval and delivery of said marshal's deed convey their title to all the property therein described to said purchaser, and deliver up all the prior deeds to the same in their possession.

7. It is further ordered, adjudged and decreed that at said sale the one hundred second mortgage bonds issued by the Huguley Manufacturing Company to the St. Louis Trust Company as trustee, or any part of them issued under said second mortgage to said St. Louis Trust Company as trustee, shall be accepted as payment on account of purchase as to any excess over the amount of said first mortgage bonds of said Alabama & Georgia Manufacturing Company and their interest and the cost of suit. This shall not interfere with the requirement to pay said $10,000.00 in cash however. Should there remain still a balance in the hands of the said marshal after the payment first of all sums due on said first mortgage bonds, principal, interest and costs as aforesaid, and after the paying the said the St. Louis Trust Company, as trustee, the said second mortgage bonds, principal and in-

terest which are hereby ordered to be so paid as being a second lien on said property, said balance shall be paid to said Huguley Manufacturing Company or its attorney of record.

8. All questions relating to compensation of the master marshal for sale, and complainants solicitors out of the fund brought into court, are reserved for determination on distribution thereof.

9. Either party may except to this decree or to any part thereof.

In open court this 30 day of May, 1892.

WM. T. NEWMAN,
U. S. Judge.

Now at the signing of the decree and before whom it is signed come said defendants and except to the said decree on the ground that under the pleadings and evidence in the cause the decree is wrong, the bonds of Ala. & Ga. Mfg Co. not being due as alleged by plff trustee and for other reasons apparent on the record.

This 30 May, 1892.

N. J. & T. A. HAMMOND,

Noted and ordered filed May 30, '92.

WM. T. NEWMAN,
U. S. Judge.

Filing—Filed in clerk's office 30 day of May, 1892.

O. C. FULLER, Clerk.

United States of America,
Northern District of Georgia.
The United States Circuit Court.

The President of the United States: to the Marshal of the Northern District of Georgia—Greeting: It is Hereby Commanded, That of the following described property, situated, lying and being in Harris county State of Georgia, and Chambers county, State of Alabama, to wit: "All of a large island in the Chattahoochee river, designated as island number six, containing 143 acres more or less; also island number 9 containing 7 acres more or less; also a small island between islands number 9 and 6, upon which the east end of the

factory building rests, containing 4 acres more or less; all of the three above described islands being in the 20 district of Harris county, Georgia.

Also all that tract or parcel of land lying on the west side of the Chattahoochee river opposite the above described islands, bounded on the east by said river, beginning at a point on the west bank of said river nearly opposite the centre of the seven acre island, at a black gum, at or near a place known as Sells corner, thence a straight point where the land owned in 1868 by Mrs. Freeman, Job Ross and James Campbell join, known then as Ross and Freeman corner to a pine stake, thence a line to a branch near said stake, and thence in line down said branch to said river, and thence down the western bank of the river to the beginning point containing sixty-five and 23-100 (65.23) acres more or less lying and being in Chambers county, of the State of Alabama, and being part of section 28 and 29 township 21 range 29 as well as a forty foot right of way from the factory building to the public road leading from West Point, Georgia, to Berlin, Alabama, at any point where the factory company may locate it including all tenements and improvements, including the cotton mill and all the machinery thereon or thereunto belonging and all water privileges and riparian rights now (or hereafter) owned and enjoyed by the said Alabama & Georgia factory you cause to be made the sum of sixty-five thousand dollars principal debt which J. J. Robinson, trustee, lately, to-wit: on the 30th day of May, 1892, in the Circuit Court of the United States for the Northern District of Georgia, recovered against the Alabama & Georgia Manufacturing Company for his damages, which he had sustained on the occasion of the not performing certain promises and undertakings then lately made by the said Alabama & Georgia Manufacturing Company to the said J. J. Robinson, trustee, and also the sum of fifty-seven and 50-100 dollars for attorney's fees, which in the said court were adjudged to the said J. J. Robinson, trustee, and also the sum of one hundred eighty-seven and 05-100 dollars for his costs and charges by him about his suit in that behalf expended, whereof the said Alabama & Georgia Manufacturing Company were convicted as appears of record; and have you the money before the judges of said court, in the term of

the first Monday of October, 1892, to render to the said J. J. Robinson, trustee, for his damages, costs and charges aforesaid, together with this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 27 day of July, in the year of our Lord, one thousand, eight hundred and ninety-two.

(SEAL.)

O. C. FULLER, Clerk.

No. 360. In the Circuit Court of the United States for the Northern District of Georgia. To October Term, 1892. J. J. Robinson, Trustee versus fieri facias Alabama & Georgia Manufacturing Company. Issued July 27, 1892. Date of judgment, May 30, 1892.

Principal		$65,000 00
Costs—Clerk		67 05
"	"	97 75
"	Attorney	57 50
"	Commr	120 00
"	Fi. fa. and copy decree	3 00

B. F. & C. A. ABBOTT,
Plaintiff's Attorney.

Master's (Marshal) Report.

In Circuit Court United States Northern District Georgia.
J. J. Robinson, Trustee.
vs.
Ala. & Ga. Manufacturing Company.

To the Honorable the Judges of said Court.

A. E. Buck, as Marshal of the Northern District of Georgia, now comes and reports to the court that in accordance with the decree of the court he exposed the property embraced in the above decree, to sale at public outcry on the first Tuesday in September, 1892, when the same was knocked off to L. Lanier, A. T. Dallis and T. J. Kirby at the sum of 66,000 dollars, the same being the highest bid. Said parties paid him the sum of 10,000 in cash which sum he

now has subject to the order of the court for such order and direction as may be given in the matter.

A. E. BUCK,
U. S. Marshal, Nor. Dist. Ga.

This 15 September, 1892.

Filing—Filed in clerk's office Sept. 15, 1892.

O. C. FULLER, Clerk.

Petition of L. Lanier et al for Decree of Confirmation.

J. J. ROBINSON, TRUSTEE,	)	Decree of Foreclosure.
vs.	)	In Circuit Court U.
ALABAMA & GEORGIA MFG. CO.	)	States, N. District
ET AL.	)	Georgia.

To the Honorable W. T. Newman, Judge, &c.

The petition of L. Lanier, A. T. Dallis and T. J. Kirby shows that they representing all the bondholders of said company they purchased the property embraced in said decree on the first Tuesday in September, 1892, at public outcry at and for the sum of $66,000 sixty-six thousand dollars, they being the highest and best bidders. In said purchase they acted as agents for all the bondholders except the owners of 7,000 dollars principal and interest. They paid 10,000 dollars cash on the spot.

Under the decree "any balance due on the purchase may be in the bonds of the company as cash, in the proportion that such bonds would be entitled to share in the proceeds of the sale on distribution, the bonds to be delivered into court for credit or collection according as they may be paid in part or wholly."

Your petitioners have said bonds represented by them as agents of the purchasers and as their own aggregating 58,000 dollars and interest ready to pay in on said purchase according to said decree and will have the account stated by consent of the holders of said 7,000 dollars of bonds not interested in the purchase when the court is ready to pass on the question of confirming the sale.

The expenses have not been agreed on in fact, that is the master's compensation, the marshal's compensation and perhaps some other items of cost.

Your petitioners now come and ask that the sale be confirmed and said items of cost be fixed and that the court will pass on the same on the 15th inst. at 10 o'clock A. M., and that the

court pass such other order in the premises as may be proper.

ABBOTT & SMITH,
DORSEY, BREWSTER & HOWELL,
Sols. for Compl'ts. and Petitioners.

It is ordered that the solicitor for defendants and the holder of said bonds mentioned in this petition be served and that they show cause before me in the 15th inst. at 10 o'clock A. M. why the prayer of this petitioner should not be granted.

This Sept. 14, 1892.

WM. T. NEWMAN,
U. S. Judge.

Due and legal service this petition acknowledged copy waived.

Sept. 14, 1892.

N. J. & T. A. HAMMOND,
Atty. for Mrs. S. Huguley holding $60,000 of bonds and Defendants as aforesaid.

Filed in clerk's office 14 day of Sept. 1892.

O. C. FULLER, Clerk.

Decree Confirming Sale.

Decree of Foreclosure. In Circuit Court of U. S. Nor. Dist. Ga.

J. J. ROBINSON, TUSTEE,
vs.
THE ALABAMA & GEORGIA MFG. CO. ET AL.

The report of A. E. Buck as commissioner to make sale of the property having been filed in the office of the clerk of this court in the above stated matter, showing that he exposed the property embraced in the decree to sale at public outcry at the time and place specified in the decree and that the provisions and directions of said decree were in all respects complied with and that the property was knocked down to L. Lanier, A. T. Dallis and T. J. Kirby at and for the sum of sixty-six thousand dollars ($66,000.00) they being the highest and best bidders.

It is now considered ordered and allowed that said sale be and the same is hereby confirmed in all respects, and that said A. E. Buck as the commissioner of this court be and he is hereby authorized and directed to convey, to said purchasers named, all and singular the property and the property rights of every description described in said decree, upon said purchasers complying with the terms of said decree.

It is further ordered and decreed that the compensation of the solicitors for the plaintiff, to-wit: Abbott & Smith, Dorsey, Brewster & Howell and N. D. Denson, for conducting the litigation on part of the plaintiff and for bringing the fund into the court, be and the same is hereby fixed at twenty-six hundred dollars and that the compensation of J. J. Robinson, trustee, plaintiff in this case be fixed at five hundred dollars.

It is further ordered and decreed that all bonds not represented by said purchasers shall be, by said Buck commissioner, paid to the holders thereof on presentation, to the extent that such bonds and coupons would be entitled to share in the net proceeds of the sale of said property.

The said Buck will pay the clerks bill of cost and other costs taxable by law—that is the costs in the main case above stated proper, except the item of commissions for one hundred and twenty dollars, shall be paid to N. J. & T. A. Hammond, solicitors, same being paid out for taking interrogatories. He will also pay said J. J. Robinson his compensation as fixed above and Abbott & Smith one thousand dollars, to Dorsey, Brewster & Howell one thousand dollars and to N. D. Denson six hundred dollars, being in the aggregate the sum of twenty-six hundred dollars solicitors fees taxed.

The said Buck is authorized to retain out of the proceeds of said sale his own compensation as fixed by order of the court in this cause to-wit, four hundred dollars, also the sum of two hundred and fifty-two dollars $252.00 for advertising said property in the Journal and Constitution newspapers and he will pay the last two sums.

In open court this September 16th, 1892.

WILLIAM T. NEWMAN,
United States Judge.

Filed in clerks office 16 day of Sept., 1892.
O. C. FULLER, Clerk.

Order Fixing Compensation of Commissioner.

Decree of Foreclosure. In Circuit Court U. S. Northern District, Georgia.

J. J. Robinson, Trustee,

vs.

The Alabama & Ga. Mfg Co. et al.

It being made to appear to the court by the report of A. E. Buck, who was appointed by the decree of the court in the above stated matter, to make sale of the property embraced in said decree, that he exposed the property at public outcry at the time and place named in the decree, and that the property was knocked down to L. Lanier, A. T. Dallas and T. J. Kirby at the sum of 66,000 dollars.

And it appearing also that said Buck advertised and exposed to sale, the property as marshal of said district according to the literal wording of said decree in that respect.

And it being the intention of this court to appoint said Buck as commissioner of this court to make said sale and that it should be made in all respects in conformity with the rule and practice of courts of equity in making sales, and not under the law governing marshal's sales under process issuing out of courts of law and such was the desire and intention of counsel as shown by the decree in reference to the advertisement, confirmation of sale, etc.

And it further appearing that the provisions of said decree as to advertisement, terms, etc., have been fully complied with.

It is therefore considered ordered and decreed that the compensation of said Buck, as commissioner, for making said sale, the execution and delivery of the deed to the purchasers and the doing of any and all other acts necessary to complete the sale be and the same is hereby fixed at the sum of four hundred dollars.

It is further ordered that said Buck, as marshal of said district, under the facts of the case be and he is hereby

relieved from embracing his compensation, so awarded him, in his official report as marshal, to the government.

And it is further ordered and decreed that said decree be so far amended and corrected as to require said Buck to make title to the property as commissioner of this court instead of making the same as marshal.

In open court this 16th Sept., 1892.

WM. T. NEWMAN,
U. S. Judge.

Filing—Filed in clerk's office 16 day of Sept., 1892.

O. C. FULLER, Clerk.

Petition for Appeal.

Bill to Foreclose Mortgage. In the Circuit Court of the United States, for the Northern District of Georgia.

J. J. Robinson, Trustee,
Plaintiff,

vs.

The Alabama & Georgia Manufacturing Company. The Huguley Manufacturing Company & Wm. T. Huguley,

Defendants.

The above named defendants the Alabama & Georgia Manufacturing Company, the Huguley Manufacturing Company and Wm. T. Huguley, conceiving themselves aggrieved by the decree foreclosing said mortgage, entered on the 30th day of May, 1892, in the above cause, do hereby appeal to the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana. Said defendants (except Wm. T. Huguley) have heretofore prayed an appeal in this cause and for leave to supersede the said decree; which appeal and leave was granted but exigencies having arisen by reason whereof the bond on ten thousand dollars required for a supersedeas was not given and said appeal was abandoned and the clerk was instructed by atty for said appellants not to send up the record. Said defendants, the Alabama & Georgia Manufacturing Company, the Huguley Manufacturing Company and Wm. T. Huguley now pray that an appeal from said decree be allowed, without superseding the same, and on bond with

security being given for the costs of appeal in said cause, and said appellants now tender their bond with two good and sufficient securities, and pray that the same be approved and ordered filed.

This 21st day of November, 1892.

JOHN M. CHILTON,
Solr. for Appellant.

Order Allowing Appeal.

U. S. Circuit Court.
Northern District of Georgia.

And now on this the 21st day of November, 1892, it is ordered that the bond tendered for costs of the appeal be and is hereby approved and that the appeal be allowed as prayed for and the clerk send up the entire record to this date.

WM. T. NEWMAN,
U. S. Judge.

Assignment of Errors.

Bill to Foreclose Mortgage. In the Circuit Court of the United States, for the Northern District of Georgia.

J. J. Robinson, Trustee, &c.,
Plff.
The Ala. & Ga. Mfg. Co., The
vs.
Huguley Mfg. Co. & Wm.
T. Huguley,
Defts.

Now comes the Alabama & Georgia Manufacturing Company, the Huguley Manufacturing Company and William T. Huguley, who appeal from the decree of foreclosure in said cause, and with their appeal file the following assignment of errors, jointly and severally:

First. The court erred in overruling the demurrers interposed to the bill of complaint of the said J. J. Robinson. Said demurrer should have been sustained, and each and every ground thereof should have been sustained.

Second. The court erred in granting the final decree granting the foreclosure of the mortgage against the said property of the Alabama & Georgia Manufacturing Company specified therein, because, under the evidence there was no such default as would justify such foreclosure.

Third. The court erred in holding that there was in July, 1890, no office of the Ala. & Ga. Mfg Co. at West Point, Georgia, to which holders of bonds should have made application for the payment thereof.

Fourth. The court erred in holding that the actual payment of the coupons mentioned, in the opinion, had been made at West Point, Georgia, through W. C. & L. Lanier, bankers at that place, because the evidence shows that the payment there mentioned, were actually made at the Atlanta National Bank and that W. C. & L. Lanier simply took up the coupons and forwarded same to the Atlanta National Bank, for payment.

Fifth. The court erred in holding that the resolutions of the stockholders authorizing the issuance of the bonds, gave authority to the officers of the company to insert in the bonds, the provision that the entire debt should fall due upon default continued for six months after demand to pay any installment of interest.

Sixth. The court erred in holding that under the evidence, the Huguley Manufacturing Company was estopped from setting up the objection above set forth in the fifth assignment of error; and further in making that objection, the objection only of the Huguley Manufacturing Company, when it was equally urged in favor of the Ala. & Ga. Mfg Co.

Seventh. The court erred in holding that the coupons were not entitled to days of grace, and in fixing July 1st as the day on which the six months (which must elapse before the right to foreclose existed) began to run instead of the 3rd day of July, as appellants claim.

8th. The court erred in holding that, under the evidence, the bondholders had not accepted the Atlanta National Bank as the place where they must ask for payment of interest on said bonds; and further in holding that no money was placed in said bank to pay said interest until the 2nd day of January, 1891. The evidence showing (appellants contend) that said bondholders had not accepted said

bank as the place of payment, and (as they further contend) the evidence showing that the money to pay said interest was in said bank on the first day of January if not before that time.

9th. The court erred in holding that the non-payment of interest (continuing for six months) authorized a decree foreclosing the mortgage as to the principal of the bonds.

J. M. CHILTON,
Sol'r for Appellants.

Let this assignment of errors be filed with the appeal above allowed.

This 21 day of Nov'r, 1892.

WM. T. NEWMAN,
U. S. Judge.

Filing—Filed in clerk's office this 21st day of Nov'r, 1892.

O. C. FULLER, Clerk.

Appeal Bond.

Know all Men by these Presents, That we, The Alabama & Georgia Manufacturing Company, The Huguley Manufacturing Company, W. T. Huguley, as principal, and Allen Fort as sureties, are held and firmly bound unto J. J. Robinson, trustee, in the full and just sum of five hundred dollars to be paid to said J. J. Robinson, trustee, his certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 21st day of November, in the year of our Lord one thousand eight hundred and ninety-two.

Whereas, lately at the March term 1892 of the Circuit Court of the United States for the Northern District of Georgia, to-wit, on the 30th day of May, 1892, in a suit depending in said court, between J. J. Robinson, trustee, as complainant and the Alabama & Georgia Manufacturing Company, The Huguley Manufacturing Company, W. T. Huguley, were defendants, a decree was rendered against the said The Alabama & Georgia Manufacturing Company, The Huguley Manufacturing Company, W. T.

Huguley, and the said The Alabama & Georgia Manufacturing Company, the Huguley Manufacturing Company, W. T. Huguley having obtained said decree and filed a copy thereof in the clerk's office of the said court to reverse the said decree in the aforesaid suit, and a citation directed to the said J. J. Robinson, trustee, having been duly signed by the judge of said court citing and admonishing him to be and appear before the United States Circuit Court of Appeals for the Fifth Circuit, to be holden at New Orleans, Louisiana, within thirty days from the date thereof.

Now the Condition of the Above Obligation is Such, That if the said The Alabama & Georgia Manufacturing Company, The Huguley Manufacturing Company, W. T. Huguley, shall prosecute their appeal to effect, and answer all costs of appeal if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of—

(Seal) HUGULEY MANUFACTURING CO.
(Seal) By D. JANNOPOULO, Prest.
THE ALA. & GA. MFG. CO.
(Seal) By W. H. HUGULEY, President.
(Seal) W. T. HUGULEY.
(Seal) ALLEN FORT.

Approved by—

WM. T. NEWMAN,
U. S. Judge.

Filing—Filed in clerk's office 21st day of Nov'r. 1892.
O. C. FULLER, Clerk.

United States of America,
Northern District of Georgia.

In person appeared before me Allen Fort, surety on foregoing bond, who being duly sworn, deposes and says that he is worth the sum of five hundred dollars ($500.00) in his own right, over and above his just debts and liabilities, and exemptions under the homestead and exemption laws of Georgia; that his property consists of real estate which he owns in his own right, free from incumbrance, of the value of five thousand dollars, in the county of Sumpter, Georgia, and for the

purpose of meeting any liability which may be adjudged against him as surety on foregoing bond, he hereby waives for himself and family all homestead and exemption rights under the Constitution and laws of the State of Georgia, to the property above described, and all his other property.

ALLEN FORT.

Sworn to and subscribed before me this 11th day of Nov. 1892.

O. C. FULLER, Clerk U. S. C. C.

Citation.

United States of America, ss.

The President of the United States to J. J. Robinson, Trustee, &c—Greeting: You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Fifth Circuit, at New Orleans, Louisiana, within 30 days from the date hereof pursuant to an appeal duly taken and allowed and filed in the clerk's office of the Circuit Court of the United States for the Northern District of Georgia wherein the Alabama & Georgia Manufacturing Company, The Huguley Manufacturing Company and William T. Huguley are appellants and you are defendant on appeal, to show cause, if any there be, why the decree rendered against the said appellants as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Wm. T. Newman, judge of the District Court setting in the Circuit Court of the United States this 21st day of November, in the year of our Lord one thousand eight hundred and ninety-two.

WM. T. NEWMAN,
U. S. Judge.

Due and legal service of this citation acknowledged and copy waived.

This 21 day of Nov. 1892.

DORSEY, BREWSTER & HOWELL,
B. F. ABBOTT,
Sols. for Plff. J. J. Robinson, Trustee, &c.

Filed in office this 21 day of Nov. 1892.

O. C. FULLER, Clerk.

United States of America,
Northern District of Georgia.

I, Olin C. Fuller, clerk of the United States Circuit Court in and for the Northern District of Georgia, do hereby certify the foregoing to be a true, full, correct and complete transcript of the record and proceedings had in the cause wherein J. J. Robinson trustee was complainant and Alabama and Georgia Manufacturing Company, Huguly Manufacturing Company and W. T. Huguly were respondents, as appears of record and now remaining on file in my office.

In testimony whereof I hereunto set my hand and the seal of the said Circuit Court, at Atlanta, Ga., this 9th December, 1892.

(SEAL) OLIN C. FULLER, Clerk.

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PART II

TRANSCRIPT OF RECORD

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE FIFTH CIRCUIT AT NEW ORLEANS, LA.

No.

THE ALABAMA & GEORGIA MANUFACTURING COMPANY, HUGULEY MANUFACTURING COMPANY AND WILLIAM T. HUGULEY

Appellants

versus

J. J. ROBINSON, TRUSTEE, ETC.,

Appellee.

APPEAL FROM CIRCUIT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF GEORGIA.

JOHN M. CHILTON,
ALLEN FORT
HALL & HAMMOND,
BIGBY, REED & BERRY,

Solicitors for Appellants

THE CRANE CO., WASHINGTON

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE FIFTH CIRCUIT AT NEW ORLEANS, LA.

No.

THE ALABAMA & GEORGIA MANUFACTURING COMPANY, HUGULEY MANUFACTURING COMPANY AND WILLIAM T. HUGULEY,

Appellants

versus

J. J. ROBINSON, Trustee, Etc.,

Appellee.

Appeal from Circuit Court of the United States, Northern District of Georgia.

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Petition For Restitution, Etc.

J. J. ROBINSON, TRUSTEE &C, *versus* THE ALABAMA & GEORGIA MANUFACTURING CO., THE HUGULEY MANUFACTURING CO. and WILLIAM T. HUGULEY	In Equity in the Circuit Court of the United States for the Northern District of Georgia.

To the Honorable the Circuit Court of the United States for the Northern District of Georgia, and to the Judges and Justices thereof: The Alabama and Georgia Manufacturing Company and the Huguely Manufacturing Company, each a corporation under the laws of the State of Georgia, file this petition, in the above entitled cause, against L. Lanier, A. T. Dallas and J. T. Kirby, who reside in said Northern District of Georgia, and the "Galeton Cotton Mills Company," a corporation organized under the laws of the State of Alabama, but having its principal place of business at West Point, in said Northern District.

Answer thereupon your petitioners complain and say:

1st. That on the 21st day of January, 1891, J. J. Robinson filed his bill in this Court against petitioners and W. T. Huguley, in and by which, he, as trustee, prayed a foreclosure of a certain mortgage therein alleged to have been executed to him and others, as trustees by said Alabama and Georgia M'f'g Company, of date January 2nd. 1884, upon its factory, machinery and lands therein described, to secure an issue of sixty-five thousand dollars in bonds and interest thereon said bonds bearing date on the 7th day of January, 1884, and to run 20 years, and to bear interest at the rate of eight (8) per cent. per annum, payable semi-annually, principal and interest payable at West Point, Georgia.

It was further alleged in said bill, that said Alabama & Georgia M'f'g Company had failed to pay the interests maturing on said bonds July 1st, 1890, or a large part thereof, and that it was one of the terms of each of said bonds that

"in case of the non-payment of any interest-coupon hereto attached, if such default shall continue for six months after maturity, and demand of payment, the principal of this bond shall become immediately due and collectible."

It was alleged that said failure to pay had continued for more than six months after demand made, all which will more fully appear from said bill and the exhibits thereto, which are referred to as part of this petition.

2nd. Petitioners aver that they answered said bill, and that upon the issues so made up, testimony was taken. That it was disclosed by the testimony so taken, that holders of some of the said bonds had accepted, after the first day of January, 1891, the interest due July 1st, 1890, while other holders had not accepted said interest.

3rd. Petitioners aver that, without ordering a reference or ascertaining otherwise the number and amount of bonds on said interest had been accepted, this Court, on the 30th day of May, 1892, rendered a final decree whereby it was adjudged and decreed that said J. J. Robinson, as trustee aforesaid, recover of said Alabama & Georgia M'f'g Co. the sum of sixty-five thousand dollars, said sum being the entire amount of the bonds secured by said mortgage together with accrued interest thereon, and interest on said interest, and costs of suit. It was further adjudged, that unless said sums should be paid by the Alabama & Georgia Manufacturing Company on or before the 1st day of July, 1892, the said mortgaged property, which is fully described in said decree, should be sold by the Marshal of said District on the first Tuesday in September, 1892. Said decree also contained directions for putting purchaser in possession on confirmation of the sale, and other directions, all of which will fully appear by the decree itself, to which reference is here made.

4th. Petitioners allege that the required payment was not made by the Alabama & Georgia M'f'g Company, and that

said mortgaged property was exposed to sale and sold by the United States Marshal on the first Tuesday in September, 1892, under said decree.

That said L. Lanier, A. T. Dallas and J. T. Kirby, who were a committee of said bondholders chosen by them for that purpose and who acted in the premises for said bondholders, became the purchasers at the sum of sixty-six thousand dollars.

Petitioners aver that said committee paid down the sum of ten thousand dollars in cash, required by the terms of said decree, which was applied in part, to counsel fees for the solicitors of the complainant, compensation to the trustee for filing the bill, and court costs, and the remainder about $4,500 was paid out to Mrs. Sallie H. Huguley on account of some six thousand dollars of said bonds owned by her, she declining to participate in the reorganization with the view to which the property was purchased, and that being her pro-rata of the purchase money.

Petitioners allege that said entire bid of sixty-six thousand dollars, except said sum of $10,000, was paid in bonds and coupons of the Alabama & Georgia M'f'g Company as authorized by the terms of said decree, and which said Lanier, Dallas and Kirby represented in making the purchase.

Petitioners allege that said Lanier, Dallas and Kirby filed their petition in said cause on the 14th day of September, 1892, setting forth that they, representing all the bondholders of said Company, had purchased the property embraced in the decree and that in said purchase, they had acted as the agents of all the bondholders except the owners of Seven Thousand Dollars, principal and interest.

That they had paid Ten Thousand Dollars, and had bonds represented by them, as agents of the purchasers and as their own, aggregating Fifty Eight Thousand Dollars and interest ready to pay in on said purchase under the decree; and would have the account stated, by the consent of the holders of Seven Thousand Dollars of bonds not interested in the pur-

chase, when the Court should be ready to pass upon the question of confirming the sale.

The prayer of the petition was that the sale might be confirmed the 15th of September, 1892.

A copy of said petition, with the order of the Judge thereon, setting the 15th day of September, 1892, as the time for hearing the same is hereto attached marked "exhibit A," and made a part hereof.

Petitioners allege that on the 15th September, 1892, the Marshal filed a report of said sale, and on the same day, on the report of the Marshal, and on the petition of L. La ier, et al., said sale was confirmed and the Marshal was directed to convey to said purchasers named the mortgaged premises described in said decree.

6th. Petitioners allege that at the date of said final decree and of the sale and of the confirmation of the sale, the Huguley Manufacturing Company was in possession of said mortgaged premises, and actively operating the factory thereon situated, in which was 200 looms, 7,000 spindles and other machinery. That on the confirmation of the sale, said Huguley Manufacturing Company turned over to the purchasers said mortgaged premises, as they were required to do by the terms of said final decree, and said purchasers, or some of them, subsequently organized themselves into a corporation known as "The Galeton Cotton Mills," and under the latter name, said factory has been actively operated since the confirmation of said sale.

Petitioners aver that the rents and profits of said mortgaged premises received by said vendees, and those claiming under them during said time, have amounted to a large sum, to-wit, more than Fifty Thousand Dollars over and above all expenses; And they aver that the rental value of said premises, during said term, would have been a large sum to-wit, Fifty Thousand Dollars.

7th. Petitioners allege that on the 21st day of November,

1892, they duly prayed an appeal from said final decree of 30th day of May, 1892, to the United States Circuit Court of Appeals for the Fifth Circuit. That said appeal was duly allowed, and a bond for the costs of said appeal was duly approved in this Court, and said cause duly removed to said Circuit Court of Appeals, and there submitted. That, thereafter, to-wit, on the 30th day of May, 1893, said Circuit Court of Appeals reversed and annulled said final decree, as will fully appear from the Mandate of said Court and the opinion rendered in said cause, and which are here referred to as parts hereof.

The premises considered, the petitioners pray that said final decree of May 30th, 1892, and said sale of said mortgaged property, made thereunder and the decrees confirming the same, be set aside and annulled, and that the said mortgaged premises be restored to the Huguley M'f'g Company from whose possession it was taken.

In this connection, petitioners deny that they are liable to refund any part of the said ten thousand dollars, but should it be held that they should refund the same or any part thereon then they hereby offer to refund all or so much thereof as it may be held to be their duty to refund; but they aver that the value of the rents and profits during the time the Huguley M'f'g Co., has been out of possession as aforesaid, is very much larger than said sum, and they pray that if they are liable for any part of said sum, it may be deducted from said rents and profits.

Petitioners pray that it may be referred to some suitable person, as Master, to ascertain and report the value of the rents and profits of said mortgaged premises from the time that they were turned over by the said Huguley M'f'g Company to the time when the possession thereof shall be restored to said Company under the order herein prayed, and any waste or damage done to any of the property turned over under said sale, or the value of said property converted by said defendants.

Petitioners further pray that any balance which may be found due to either of your petitioners, upon such an accounting, may be applied—

1st. To the repayment of such portion, if any, of the said sum of ten thousand dollars as petitioners may be held liable to refund.

2nd. Next to the payment of any interest in arrears on said sixty-five thousand dollars of said bonds, and

3rd. Lastly, that any remainder may be decreed to be paid over to the Huguley M'f'g Company as the successor in interest to the Alabama & Georgia M'f'g Company.

And if mistaken in the special relief prayed, petitioners pray for such other and further, or different relief, as the nature of the circumstances of their case may require as to equity shall seem meet.

Petitioners pray that this Honorable Court make an order requiring that notice issue to said L. Lanier, A. T. Dallas and J. T. Kirby and said "Galeton Cotton Mills," requiring each to show cause on a date to be named by your Honors why the relief herein prayed should not be granted; and that service be perfected on the said Galeton Cotton Mills by serving said notice on said L. Lanier, who is the President, and whose place of business is in said Northern District of Georgia.

JOHN M. CHILTON, ALLEN FORTE,
BIGBY, REED, BERRY & FOTTE,
Solicitors for Petitioners.

Exhibit A.

Petition L. Lanier et al., for decree of Confirmation.

J. J. ROBINSON, Trustee,
vs.
ALABAMA & GEORGIA MANUFACTURING COMPANY ET AL.
} Decree of Foreclosure in Circuit Court U. S., N. Dist. Ga.

To the Hon. W. T. Newman, Judge, &c: The petition of L. Lanier, A. T. Dallas and J. T. Kirby shows that they representing all the bondholders of said Company purchased

the property embraced in said decree on the first Tuesday in September, 1892, at public outcry at and for the sum of sixty-six thousand dollars, they being the highest and best bidders. In said purchase they acted as agents for all the bond holders except the owners of seven thousand dollars principal and interest. They paid ten thousand dollars cash on the spot.

Under the decree "any balance due on the purchase may be paid in the bonds of the Company as cash, in the proportion that such bonds would be entitled to share in the proceeds of the sale on distribution, the bonds to be delivered into court for credit or collection according as they may be paid in part or wholly."

Your petitioners have said bonds represented by them as agents of the purchasers and as their own aggregating $58,000 and interest ready to pay in on said purchase according to said decree and will have the account stated by consent of the holders of said $7,000 of bonds not interested in the purchase when the court is ready to pass on the question of confirming the sale.

The expenses have not been agreed on in fact, that is the Master's compensation, the marshal's compensation and perhaps some other items of cost.

Your petitioners now come and asked that the sale be confirmed and said items of cost be fixed and that the court will pass on the same on the 15th inst. at10 o'clock a. m., and that the court pass such other order in the premises as may be proper.

ABBOTT & SMITH,
DORSEY, BREWSTER & HOWELL,
Solicitors for Plaintiffs and Petitioners.

It is ordered that the Solicitor for defendants and the holder of said bonds mentioned in this petition be served and

that they show cause before me on the 15th inst. at 10 o'clock a. m. why the prayer of this petitioner should not be granted.

WM. T. NEWMAN, U. S. Judge.

Filing.—Filed in Clerk's Office 10th day of July, 1893.

O. C. FULLER, clerk.

Due and legal service of this petition acknowledged. Copy waived July 28th, 1893.

B. F. ABBOTT,
DORSEY, BREWSTER & HOWELL,
Solicitors for Respondents.

In the Circuit Court of the United States for the Northern District of Georgia, August Rules, 1893.

ALABAMA & GEORGIA MANUFACTURING COMPANY ET AL, Complainants *versus* L. LANIER, ET AL., Respondents	Petitions, etc., in equity filed 10 July, 1893 in case No. 360, in eq. in said court.

To O. C. Fuller, Clerk U. S. Circuit Court:

You will please enter our appearance for respondents in the above stated case.

B. F. ABBOTT,
DORSEY, BREWSTER & HOWELL,
Solicitors for Respondents in said petition.

At Atlanta, Ga., this 2nd day of August, 1893.

Answer.

J. J. ROBINSON, Trustee, *versus* THE ALABAMA & GEORGIA M'F'G CO., HUGULEY M'F'G CO., AND W. T. HUGULEY.	In equity in Circuit Court U. S., for Northern District of Georgia.

Petition, &c., filed July 10, 1893.

And now come L. Lanier, A. T. Dallas, J. T. Kirby and the Galeton Cotton Mills, and, without waiving demurrer

filed by them to the petition of said two corporations, defendants above named answer said petition as follows:

All allegations contained in said petition in paragraphs from one to five inclusive, are made on matter which is of record in the cause, and without admitting that the same are correct, as stated in the petition, respondents pray that the record in said cause may be referred to for the truth as to what said proceedings were, and that petitioners be held to strict proof by the record as to the allegations so made.

Respondents further say that it may be true that said Huguely Manufacturing Company was in possession of the factory property mentioned in the petition at the date of the confirmation of the sale, as alleged, but respondents deny that such factory was of the capacity alleged.

It is true that one of the purchasers, to-wit: L. Lanier, joined in the organization of the new corporation, known as the Galeton Cotton Mills, but the other two, to-wit: said Kirby and Dallas, did not so join in the organization of said company, and whatever interest they had under the purchase they transferred to the said L. Lanier, and his associates in such new organization.

Respondents deny that the profits of said factory during the time alleged were fifty thousand dollars ($50,000), or any other sum; but on the contrary, they aver that said factory was run at a loss.

Respondents admit that said defendants in said original cause did enter an appeal on the 21st of November, 1892, from the decree of the 30th of May, 1892, and that said cause was heard by the Circuit Court of Appeals for the Fifth Circuit, and that the judgment of the Court below was reversed, but respondents do not admit that the result of such reversal, as shown by the record, is to set aside the proceedings had in said cause under the facts of the case. Respondents refer to the record for greater certainty as to what proceedings were had therein, and they deny that under the record petitioners are entitled to any relief whatever in the cause.

These respondents, by way of further answer and cross petition, allege that said petitioners are not entitled to any relief, whatever, for the reason that since the rendition of the said decree, the said two corporations named in the petition filed their appeal in said cause, for the purpose of reviewing and reversing said decree, to-wit: on the 28th day of July, 1892. Said appeal was not prosecuted; the same was abandoned and the Clerk of the said Circuit Court was instructed by the solicitors for the two said corporations not to copy and transmit the record. Before another appeal was instituted the property described in said decree was sold. Said sale was made in all respects in pursuance of the decree therefor, and in the presence of N. J. Hammond and John C. Orrick, solicitors for said two corporations, petitioners in this case. Neither of the said solicitors made any objections to the said sale, but on the contrary said Hammond stated to said Lanier, one of the respondents, that the purchaser would get a good title. Said Orrick stated at the time of the sale that there would be no further resistance to decree by said Huguely Manufacturing Company. As soon as the said property was knocked off, said Orrick on said day of sale, cancelled the insurance policies which the Huguely Company had on the property, and notified said Lanier that said Company would have nothing further to do with the property.

The said Lanier communicated said statement of the said Hammond and Orrick to his associates in the purchase of the property, and the said statements were made to him by the said Hammond largely controlled him and them in making and completing the purchase.

Respondents admit that no reference was made to a master, to ascertain the nature and extent of the default of interest of the bonds of Alabama & Georgia Manufacturing Company, and the amount of principal and interest due on the same, and to whom due for the reason that it was con-

ceded during the progress of the cause, that if any of the holders of the bonds were entitled to demand a foreclosure by reason of the non-payment of the interest, that the balance of the holders were also entitled to demand a foreclosure, whether interest had been paid on the bonds so held by the balance of the holders or not. That is to say, it was conceded that if one class of bondholders was entitled to a foreclosure the other class of bondholders were likewise entitled. It was not considered desirable that there should be a foreclosure as to a portion of the bonds and no foreclosure as to the balance.

There was a portion of the bonds upon which had been paid one-half a year's interest more than had been paid on the bonds held by L. Lanier and his associates, who were seeking to foreclose the mortgage. The amount of the bonds upon which had been paid the one-half year's interest more than the others, was about ten thousand ($10,000) dollars. These bonds were held in part by D. Janopoula, and others who were unfavorable to a foreclosure of the mortgage, and these bonds were afterwards represented at the time of the confirmation of the sale, and at the time of the distribution of the proceeds, by N. J. Hammond, Attorney of record for said two corporations.

There was no reference to a matter because it was agreed between said Hammond, counsel of record, and counsel for the plaintiff, Robinson, that they would take the testimony in the case and from it and agree who the holders of the bonds were, and the principal and interest due upon the same. It was stated in open court, as respondents are informed, that there would be no necessity for a master, because an agreement had been or would be reached.

All of the bonds were in fact audited as to principal and interest, and an account taken of the names of the holders by A. E. Buck, the commissioner named to make the sale, and after he had made his calculations, respondents are informed

that said Hammond went over and verified the figures of said Buck, and found that they were correct. As averred said Hammond controlled, as attorney, all or nearly all of the bonds, not embraced in the purchase, and he collected from said Buck, the percentage to which each was entitled out of the proceeds of the sale.

D. Jannopoulo, the President of said Huguley Company, controlled or owned some of the said bonds, and he accepted the amount due him on each of the bonds so held—which matter appears on record.

All of this occurred before the appeal was entered which resulted in the reversal of the judgment of the court below. Respondents were led to believe from this conduct, so above set out, that the litigation in reference to the foreclosure had fully ended, and that all of the parties intended to acquiesce in the decree entered.

Said Lanier, and Kirby and Dallas transferred their interest in said property to the Galeton Cotton Mills, corporation duly organized before said appeal was entered. Stock to the amount of twenty thousand ($20,000) dollars was taken in same by persons other than the bondholders interested in the purchase, and the said sum was paid in on said property into the capital stock of the corporation, on the faith of the statement so made to the said Lanier and communicated to them that the title was good, and on the faith that said litigation was fully ended. Said Galeton Cotton Mills is a bona fide purchaser of said property, and is now in the possession of the same, and is entitled to hold, use and enjoy, free from any claim of petitioner's if any they have, which these respondents do not in anywise admit.

Said Kirby and Dallas have now no interest in said corporation, or any of the said purchase. They accepted the percentage coming to them on the bonds held by them out of the proceeds of such sale.

Respondents aver that said appeal was fraudulently pros-

ecuted by said two corporations after their solicitors of record had entered an appeal and had abandoned the same, and after its officers and attorneys had stated to these respondents that there would be no further resistance to said decree; and after they had actually aided in the confirmation of the sale and distribution of the proceeds, and receiving the proceeds of the sale in part as herein averred, these respondents say that they are estopped to question validity of said sale, or any proceeding had in the cause.

Respondents further answering say, petitioner's claim to have a judgment for costs growing out of said appeal for the sum of two hundred and fifty ($250). These respondents aver that it is inequitable, under the facts of the cause, for said petitioners to enforce any judgment for costs against said Robinson, or against the trust property, for the purpose of making the said costs, and they pray that on the hearing of this matter a decree be made perpetually enjoining them from enforcing the same.

Respondents further pray that said sale be decreed to be valid, and that the title of the said factory property be quieted in the Galeton Cotton Mills, and that said petitioners be perpetually enjoined from further proceedings in said case.

And that respondents have such other and further relief as to the court may seem right and preferable.

Respondents refer to the record of said cause for greater certainty as to the contents of the same, and in support of this answer and cross petition.

B. F. ABBOTT,
DORSEY, BREWSTER & HOWELL,
Respondent's Attorneys.

Filing.-- Filed in clerk's office 4th day of Sept., 1893.
O. C. FULLER, Clerk.

Demurrer.

J. J. ROBINSON,

versus

THE ALABAMA & GEORGIA MANUFACTURING CO., THE HUGULEY MANUFACTURING CO., AND W. T. HUGULEY

In equity, U. S. Court, N. Dis. of Ga., petition etc., filed July 10, 1893.

And now come L. Lanier, A. T. Dallas, J. T. Kirby and the Galeton Cotton Mills and demur to said petition and for cause of demurrer say that the petition in case of the same were true, which these respondents do not in any wise admit contains not any matter of equity whereon this court can ground any decree or give the complainant any relief or assistance as against them, these respondents.

And for cause of special demurrer these respondents say that petitioners are entitled to no relief if petition were otherwise sufficient (which these respondents do not admit) because J. J. Robinson, Trustee, is not joined as respondent to the petition, and notice served on him.

2. Because the petitioners do not tender or offer to pay to these respondents the money paid into court on said purchase of the Factory property and distributed among the holders of the bonds not embraced in the purchase of the property.

3. Because under the record of the cause as a whole petitioners are estopped to dispute the decree made therein and the sale thereunder.

B. F. ABBOTT,
DORSEY, BREWSTER & HOWELL,
Solicitors for Respondents.

Filing.—Filed in Clerk's Office 4th day of Sept., 1893.
O. C. FULLER, Clerk.

Amendment to Petition.

J. J. ROBINSON, Trustee &c.
versus
THE ALABAMA & GEORGIA MANUFACTURING COMPANY, ET AL.

In equity in the Circuit Court of the U. S. for the N. Dis. of Ga.

Petition of the Alabama & Georgia Manufacturing Company et al., filed July 10, 1893.

And now comes the petitioners, before replication filed, having first obtained leave of the court, by way of amendment of said petition alleges:

The said Sallie P. Huguley who was the holder of certain of the bonds mentioned in the petition, did accept after the first day of January, 1891, the interest due on the first day of July, 1890, on her bonds aforesaid, thereby waiving her right to take advantage of the default of payment of said interest when the same was due and not being entitled to participate in the foreclosure aforesaid.

Wherefore the payment to her of $4,500 mentioned in said petition was without authority of law, and your petitioner can not be required to refund said sum or any part thereof.

Your petitioner names said J. J. Robinson, trustee, as a respondent hereto, and prays that he be made a party, and that notice of said petition be served upon him.

JOHN M. CHILTON,
ALLEN FORT,
BIGBY, REED, BERRY & FOTTE.

Order.

Ordered that the foregoing amendment be allowed and filed. This order granted before replication filed.

WM. T. NEWMAN, U. S. Judge.

This Oct. 2, 1893.

Filing.—Filed in Clerk's Office 2nd day of Oct., 1893.

O. C. FULLER, Clerk.

Replication.

J. J. ROBINSON, trustee, &c., *versus* THE ALA. & GA. M'F'G CO., et al. } In Equity. in the Circuit Court of the U. S., for the N. Dist. of Ga.

The replication of the Alabama & Georgia Manufacturing Company, the petitioners in the above stated petition to the answer of L. Lanier, A. T. Dallas, J. T. Kirby and the Galeton Cotton Mills.

The repliants saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that they will aver and prove their said petition to be true, certain and sufficient in the law to be answered unto; and that the said answer of said defendants is uncertain, untrue and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in said answer contain material or effectual in the law to be replied unto, confessed and avoided traversed or denied, if true; all which matters and thing these repliants are and will be ready to aver and prove as this honorable court shall decide; and hereby pray as in and by their said petition they have already prayed.

JOHN M. CHILTON, ALLEN FORT,
BIGBY, REED, BERRY & FOTTE.

Filing.—Filed in clerk's office 2d day of Oct., 1893.

O. C. FULLER, Clerk.

Order allowing 20 *days to take testimony.*

ALA. & GA., M'F'G CO., et al., *versus* ROBINSON, Trustee, et al. } Petition &c., U. S. Circuit Court, Northern District of Georgia.

Ordered that twenty days be allowed from this date in which for parties to take testimony in said matter.

For good cause shown the court reserves the right to extend the time mentioned.

In open court February 17, 1894.

WM. T. NEWMAN, U. S. Judge.

Filing.—Filed in Clerk's Office 17th day of February, 1894.

O. C. FULLER, Clerk.

Depositions of Higginbotham, Hill, and Lanier.

In the Circuit Court of the United States, Northern District of Georgia.

HUGULEY MANUFACTURING CO., ET AL., *vs.* J. J. ROBINSON, TRUSTEE, ET AL. } In Equity, Motion, Etc.

June 11th, 1894, at 5 o'clock p. m., at the offices of Messrs. B. F. & C. A. Abbott, attorneys at law, by consent of parties, the following witnesses were sworn, and examined in the above entitled cause. It is agreed between counsel that the witnesses might be sworn by the commissioner, the testimony taken down in shorthand, transcribed and returned to court without being signed by the witnesses. The testimony as above stated, and of the following witnesses, taken by M. J. McCord, commissioner.

J. T. Higginbotham sworn for the defendants.

Direct examination by Mr. Abbott.

Q. Where do you live?

A. I am living at Riverview, West Point; have been living there two years.

Q. Do you know the property known as the old Alabama and Georgia Manufacturing Company's property?

A. I do, sir.

Q. How long have you known it?

A. Since 1870.

Q. What opportunity have you had to become acquainted with the value of the property, the character of the building, the quantity and value of machinery located therein?

A. For the last four years I have been managing and superintending that property.

Q. Do you know when the Huguley Manufacturing Co. took charge of it?

A. Yes, sir, it was some time in January, 1890.

Q. Were you in court by that company?

A. Yes, sir.

Q. In what capacity were you employed?

A. From June or some time in May, 1890, I was general manager, that is, looking after the property generally.

Q. Who had charge of buying all the supplies of the mill, and the find and the making of reports?

A. I had charge of all the repair work, and making orders after July 15th. Mr. Owens, the superintendent of the mill, while he was superintendent, I had to approve all the bills and sign his orders for him as he would furnish them to me.

Q. Was Owens under you or over you?

A. He was under me.

Q. What orders went through your hands, all of them?

A. Yes, sir.

Q. Who was president of the Huguley Company?

A. Mr. Jannopoulo. His office is in St. Louis.

Q. Who else besides him had anything to do with the management of the company?

A. No one else, except the treasurer of the company.

Q. You state that you were business agent?

A. Yes, sir. I was his local agent.

Q. Were you general manager and agent?

A. I was manager at this end, and agent also.

Q. What did W. T. Huguley have to do with that company?

A. He was director in the company.

Q. What active connection did he have?

A. I think he was chairman of the board. I don't know exactly what position he did hold, but I know he was director at one time; he was elected there in the mill.

Q. What did he have to do with the cash receipts or disbursements of that company?

A. Nothing that I know of.

Q. What did he have to do with the practical operation of the mill?

A. Nothing.

Q. Under whose instructions did you work?

A. Mr. Jannopoulo.

Q. When you purchased new supplies and findings, who paid for these things?

A. They were paid for in St. Louis. I approved the bills and forwarded them on to the treasurer.

Q. Do you know what amount of expenditures during the time the Huguley Company run the factory were made for new machinery and improvements?

A. Yes, sir. I had an account current that I keep, but my books are all gone to St. Louis, but I think there was something between $4,500 and $5,000. That was about the amount. I have not my books here now, but I think it is something near $5,000.

Q. Was that for improvements on the buildings or was it for new machinery, or what was it?

A. It was improvements to the tenement houses, building new houses, water house, repairing water house and repairing some work on the roof, and some parts of new machinery added.

Q. What was the difference in the value of supplies and findings on hand when the Huguley Company took charge of it, and at the time the Huguley Company was sold out, September 6th, 1892?

A. The supplies and findings were about the same, I think, yes, sir, about the same, just about what it takes to run the mill. I took it from Mr. Foster, of the Huguley Company, and I think our supplies in September, 1892, and when it was sold in January, 1890, were about the same, including all supplies and findings on hand at that time.

Q. Now, Mr. Huguley's evidence here, he swears that the

main building is four stories high besides the attic, and that it is 60 by 220 feet, what is the size of it?

A. The size of it, it has a basement, is three stories and the attic. The length of the mill, it is 52 feet in the clear by 212.

Q. Now, at 50 cents per square foot as costs for floors what would it cost to build this structure?

A. I would have to calculate as to how many feet there are in the different floors before I could tell you exactly. I don't exactly know.

Q. Huguley swears that the Picker House is 60x80?

A. It is 52x63.

Q. Huguley says, it costs them $10,000.00, do you know what it costs?

A. I don't exactly remember, I was not with the Company when it was built, but I think the building ought to be built for about $3,000 or $4,000 at the outside. I should think it would be a high building at $4,000.

Q. Huguley says the warehouse is brick?

A. It is brick, part of it with a small shed attached.

Q. Huguley says it cost $2,000.00, what would such a building cost new now?

A. About $500, I should think, would build the house new.

Q. What is the size of the supply room?

A. It is an office about 14x17 feet.

Q. Huguley says it cost $1,000, what did it cost?

A. I let the contract, Mr. Brown and myself, and I had it built in 1888, I believe it was, or perhaps as early as 1887, and I let the rock work to Mr. Dutton for $100 or $125, I don't remember which.

Q. What would that house be worth?

A. I could build the house for $200.

Q. Huguley says the store house cost $2,000?

A. We have what was once a store house that we con-

verted into a tenement house. It is a frame with a basement room, in other words, we use it for a three room house. I suppose you might build that house,—I could not really say, as it was the thickness of the walls, but it could be built very cheap, I suppose, for $300 or $400.

Q. Mr. Huguley swears that the superintendent's house costs $2,500?

A. I could replace that work for $1,800 very liberally.

Q. He swears that the boiler and pump cost $2,500, what is the size of the boiler house and what is the size of the pump house?

A. The boiler house is 25x12.

Q. What would this house cost?

A. That house could be built, I should think, allowing $3.00 a perch for stone, it ought to be built for $150 or $200, that is, the boiler house; the pump house is built of corrugated iron, and you could build that for $50.00.

Q. Huguley says there were 64 houses costing $350 to $400 apiece, that is the operative houses?

A. We have only about 44 houses on the place, outside of the superintendent's house, and that 44 I believe they range from one to three and four rooms. There is one eight room house, and the others are one and three and four room houses. I could build them all, the entire plant—I think I could build them for $7,000 or $8,000—the whole business.

Q. Mr. Huguley says the mill contains 208 looms and 7,000 spindles, how many looms were there in the mill during the time the Huguley Company had charge of the mill and when they vacated it?

A. We had 108 effective looms, and there were some looms in the basement. I suppose 15 or 20 looms, that we haven't any use for, and have never used since I have been there.

Q. How many spindles are there?

A. We have on an actual count about 5,676 or 5,690

spindles, that is, under an actual count in the mill. Of course, there are frames in all, enough to make 5,700 spindles.

Q. Huguley says the mill has place in it for 308 looms and 1,200 spindles, and has power under control sufficient to run 308 looms and 1,200 spindles. Has that building capacity for any such machinery?

A. No, sir, it has not.

Q. How much has it capacity for?

A. I suppose we might crowd in perhaps by utilizing the lower floor, we might crowd in machinery enough to accommodate 9,000 spindles and say, 258 looms.

Q. Huguley swears that when the Huguley Company took charge in January, 1890, there were 208 looms and 7,000 spindles, and 74 cards in the factory?

A. If he counted those old looms, I can't say, but we only had 158 effective looms. I don't take into account those others there. I think we used them up to 1878, and then we bought new looms and replaced them, and I don't think they have been used since.

Q. How many spindles were in there when the new Company took charge?

A. 5,676 spindles. We have got 62 cards that we use for carding and spinning and we have two bat cards, making 64 in all.

Q. Huguley swears that his firm, W. H. Huguley & Co., immediately upon the sale at Hamilton in January, 1890, spent several thousand dollars to re-assemble the necessary and adequate force to run the mill. Were you, yourself, in charge, did you employ this help and what did it cost?

A. All the help we got there, was help we picked up right around there. On the 15th of January I think I went there, after the sale at Hamilton. I think I went there on the 15th and began organizing a force to start the mill. I picked up a lot of help who had been living there and some from the West Point Manufacturing Company and some

from the country. I don't think I spent but a small amount in getting these.

Q. Did you pay out all that was paid out to re-assemble that force?

A. No, sir, some of it has never been paid; there is a good deal of it in due bills that has not been paid yet.

Q. What will it amount to?

A. The only bills I ever paid, were watchman bills. I had a watchman at 90 cents a day and one at 75 cents a day, making in all about $1.65 a day for three or five or six months.

Q. Who else incurred any obligation in re-assembling that help, and if so, what did it amount to?

A. No one else up at that time, up to late in May or June; then I began to get help. Mr. Jannopoulo, the president, and I began to assemble the help and I suppose we had to pay transportation, but they paid that all back.

Q. What did W. H. Huguley spend?

A. If they ever spent anything, I don't know it. They spent it without any authority if they did.

Q. Would you have known it if they had spent it?

A. Yes, sir.

Q. Huguley says that the Huguley Co., put in a new water house and renovated the roof of a house there?

A. I spent on the roof and water house,—I can't exactly recall the amount, of timber in all, making $400 or $500.

Q. He says they built three new operative houses; did they do that?

A. I built two, sir.

Q. He says the basement floor of the main building was underpend and renewed?

A. No, sir, the underpending was under the 50 feet at the front end of the building. That was jacked up and underpend.

But that underpending, I suppose in all, would amount to about $150.

Q. What about the floor of the cloth room being underpend?

A. That was 52 feet across, and I put in 42x16 feet anew. I don't remember the number of feet I used, but I paid $1.25 and $1.60 for the timber.

Q. Huguley says that there was a force of machinists set to work and kept three at work in 1892?

A. We kept one machinist all the while.

Q. Is that a force in factory parlance?

A. No, sir, I don't know about force. It is a single individual. We kept a machinist all the while.

Q. He says these machinists cost $400 to $600 a month?

A. We paid our machinist $2.00 a day, at that time, we only paid $1.50. I have been paying since then, $2.00. I commenced the second year. The Huguley Company had a blacksmith and I discharged the blacksmith who, together with the machinist, were getting $2.75 a day. I discharged the blacksmith and put the machinist on $2.00 a day.

Q. Were all the cards in the factory refitted with new cards clothing?

A. No, sir. The Huguley M'f'g Co. spent, I think, about $1,800 on that. I bought two sets of card clothing and then I bought fifteen sets another time.

Q. How many did that leave without new card clothing?

A. About thirty-five sets, I think it was.

Q. He says that 2,000 English spindles were thoroughly overhauled, increasing the revolution, say 40 to 50 per cent?

A. The English spindles, I think, we only have about 1,700 there but they have never been overhauled.

Q. About what was the cost of the supplies and findings by the year for all the mill such as the Huguley Manufacturing Co. operated?

A. I think we got along on $400 or $500 a month, about. I think $500 is about what we used.

Q. What did that consist of in short?

A. It consisted of general supplies, harness, rigging and all mill supplies, and most everything, and general other small articles, that come in running a mill.

Q. For how long a time, prior to September, 1892, did Mr. Jannopoulo order you to make requisition for supplies and fail to furnish it?

A. He never refused or failed to furnish me supplies that I made requisition for.

Q. Did you ever run short of supplies?

A. We may have run short, but Mr. Jannopoulo never refused whenever I put in an order for supplies. The instructions were, get along with as few as possible.

Q. As compared with the time that the Huguley Company had charge of it, what was the operating condition of this machinery at the time they took charge and at the time they vacated it?

A. The machinery, was, of course, taking what was allowed for mill machinery, from 2½ to 5 per cent off, there was just about that difference.

Q. About 2½ per cent at the time they vacated?

A. Yes, sir, that is about the calculation of mill men. We generally count it from 2½ to 5 per cent off.

Q. Huguley says that the mill has been kept steadily in operation throughout the whole time since September, 1892.

A. No, sir, we have not run full time.

Q. When was the mill started by the present parties?

A. In September, 1892.

Q. How many weeks were you stopped?

A. Well, sir, from the 6th, we stopped about three weeks.

Q. How many brideburg drawing frames in that mill?

A. I believe there are four brideburg drawing frames. I am not positive though about that.

Q. How many bullards?

A. About an equal number of bullards and brideburgs and elgias. I think there were two elgias and perhaps four brideburgs or may be six.

Q. How many railway heads?

A. There was six railway heads and one railway head to an old elgia car.

Cross Examination by Mr. Reed.

I have no questions that I want to ask, but I want it understood that our agreement as to reservation of objections is of force.

Mr. Abbott?

A. Oh, yes, that obtains.

John Hill, sworn for the defendant.—Direct examination by Mr. Abbott.

Q. Where do you live?

A. Columbus.

Q. What is your business?

A. I have been a mill engineer for a great many years.

Q. Are you acquainted with patent mill machinery?

A. Yes, sir.

Q. Are you a practical expert in the manufacture of cotton goods by the use of cotton machinery, and are you an expert in judging of cotton machinery?

A. Yes, sir.

Q. And supplies and findings, and all property and attachments necessary to the running of a cotton factory?

A. Yes, sir, I think. I have been in the business since 1858, with 21 years in Columbus previous to that, I was in Illinois. I was with the Eagle & Phoenix mill in Columbus, and have built a number of outside mills in that time.

Q. What position did you hold with the Eagle & Phoenix?

A. I was engineer.

Q. Explain what is a scope of that office?

A. To make plans for the mill, bind machinery, put it in and set to going.

Q. If machinery gets defective, it is the business of the mill engineer, to detect that?

A. Yes, sir, he is the doctor of the mill.

Q. Do you know the King mill in Augusta, Ga.?

A. Yes, sir.

Q. Who built that?

A. I engineered it and bought the machinery.

Q. What sort of a mill is that, and how is it regarded among mill men?

A. I believe it is the worst competitor they have.

Q. Is it a good mill?

A. None better anywhere.

Q. From your experience as a mill engineer, with practical knowledge of such matters, do you consider yourself competent to give them appraisement or valuation of a cotton mill.

A. I have done so very frequently.

Q. Have you examined the property now in possession of what is known as the Galeton Cotton Mills at West Point?

A. Yes, sir, I did to-day.

Q. Go on and state, if you please—did you make a memorandum of your estimate there?

A. Yes, sir, this is it.

Q. Now state if you please, Mr. Hill, what was its condition—the condition you found that mill in and what is your estimate of its value, and everything, taking it as it stands.

A. The building of the Galeton Mills, as I understand it, was built in 1866. At that time it would have been a standard mill and was well built at that time, but it has the wear and tear on it from 1866 to 1894. The machinery in that mill was put in in 1866, down to, and I think some of

it in 1891, but I have given the bulk of it, as an average, the age of about 14 years, taking it all the way through. It is a heterogeneous mass of machinery. There is no uniformity in it. Every time they made an improvement in this mill, they put in a different kind of machinery and the result is, they have a heterogeneous mass of machinery with various ages. They have got two or three makes of cards, two or three makes of drawing, three or four makes of spindles and three or four makes of looms, and two or three makes of lappers. This want of uniformity is not in the interest of economy and would not be done by any ordinary engineer or by a mill expert. I looked over the machinery and found it, considering its age, in about the condition I would expect. I spent a million and a half dollars in and around the Eagle and Phoenix, and I have seen the machinery in there 21 years, and have seen the gradual wear of it. I was very greatly surprised, from the general reputation of that mill, in the character and condition of machinery there, and except its heterogeneous character, it was in about good condition as could be expected. I supposed after going through the changes that have been made, that it would have been in a rather bad fix, but I found it in a condition fully as good as I would expect machinery of the average of 14 years to be. From the examination of the machines, some of them has the date on them; some manufacturers stamp the date of the manufacture on the end of the machine; I should say that the condition of the machinery was, considering the average age, that it was machinery that has been taken care of in and about the manner that an ordinary southern manufacturer would take care of it, but in not as good condition or as well taken care of as an eastern man would do, because they know more economic ways than we do here, and they are a little bit more penurious; but taking the fair average of the mill, I should say, unless a man is particularly penurious and particularly watchful his mill would be about in

the condition as that of the Alabama and Georgia, I call that mill the Alabama and Georgia, but it is the Galeton Mills. I have been in a general way, acquainted with the reputation of the mill; been hearing from it and all that kind of thing, and employed operators from it during my entire southern life. We all know each other like lawyers and judges know each other, although I had not been there and examined it.

Q. What is your opinion as to the cost of that factory to be built anew, the entire outfit?

A. The King Mills is a modern mill, built ten years ago. That cost $26.00 per spindle, and was built for $12.50 and $13.00, and while it was a weaving mill, the whole concern was magnificent. They had lots of money, $750,000.00, to put in the mill itself, and we paid $42,000.00 for the real estate. The real estate and everything made the cost $26.00 per spindle. The water power cost immense: I made a contract for that, I think it was $26,000.00. We had to dig a canal about 35 feet, and you know that means business.

Q. When you estimated at so many dollars per spindle, that means the entire cost of the plant, the building and operative houses?

A. O, no, sir. There is a uniform method among mill men of estimating the value of mills. You can build a coarse mill at an excess considerable, or you can take a fine mill, like Mr. Lanier's, and it proportions all the way through, and yet while a coarse mill cost $24.00 or $25.00 per spindle, a finer mill, one for making finer goods, will cost all the way from $12 to $18 per spindle. I suppose the Lanier mill will be built for $20.00 per spindle on general mill principles. Now, there is a very little variation from this. The cost of machinery is absolutely uniform, except in times like these, when people are willing to sell without regard to cost much. I paid ten dollars for laying the

brick of the King Mill and the Lanette (or Lanier) Mill was built at $9.00. One was as cheap as the other, because, I presume, in any kind of business, in the last ten years there would be a difference of $1.00 a thousand in laying brick, and then everything is cheaper. To make a general statement, I would say that that is the only way you could estimate such a mill as this. There is a rule that never fails among experts and I have set on several mills that were burned up; I have been an arbitrator and have valued them. I valued, or appraised the Fulton Cotton Spinning Mill, and it was built at a price of three or four hundred thousand dollars. The ordinary way of ordinary machinists, in ordinary mills, is to take the original cost and to take 5 per cent a year off; that is the law, and that is what insurance companies, the Factory, Mutual, Phoenix and London, Liverpool and Globe, and several others that I am familiar with, that do mill business; they would offer in settlement 5 per cent as the wear and tear of the original cost. It is not 5 or 10 off. It is 5 off the original amount. You must keep taking it off, and if you go on, it will last forever, for I never saw a mill in my life that was 40 years old that didn't want to be rebuilt. The advance of the time, higher studying and better arrangements all the way through, different class of heating and all that kind of thing makes it cheaper. Our usual way is to estimate 2½ per cent off of the mill building a year.

As to water power mills, I have handled the water of the Chattahoochee at different times. I built two dams across it; I built a stone dam at Columbus, I think it cost about forty or fifty thousand dollars, and then I built another one three or four miles above, so I am quite familiar with the Chattahoochee River, and am quite familiar with its volume at Columbus; of course there is less of it here, as I look at the volume of water passing towards the mill, there is much less the volume of water on the river. I think there is an

island or system of islands. I think those islands were given to me and it had the appearance of being correct, of having 150 acres in them. To prevent obstruction up there, they have cut a branch, and that is the water that supplies the mill. The dam is in poor condition. I took out and threw out a dam that was in equally as good a fix as that. I suppose 60 per cent of all water of the dam goes right under it. The water wheels are of the olden kind. Advances have been made since 1866 and 1894 in water wheels. There is one wheel there which I think is of a later date, but of the same pattern. I think there is seventeen of those wheels; seventeen of those wheels in the Eagle & Phoenix and every time I got a whack at them, I tore them out. I have taken out as many as eight or ten of them. When you come to getting at the value of them, I don't consider that they have got a great deal of value. I don't think that anything that has been run since 1866, of any kind, has got any value. In the Eagle & Phoenix there, I went ahead and bought a good deal of machinery on my own credit. I threw out the lappers, which were two years younger than these, and I found cards, a portion of which were put in there in 1876 and a portion of which were put in in 1870. They were about the identical cards that are there in the Huguley mill. They were in excellent condition as far as that is concerned, but they were old fashion. They had as good clothing as those in the Galeton Mill. I took them out bodily and put them out of doors and broke them up, saving simply the mahogany on top; I offered them at any price, and I would have sold them at $50 a piece. I didn't expect to sell them. They were just like one of these high bicycles. They had served their time; they cost $500 a piece. Those cards were fully as good or better than those in the Huguley Mills. I put the average age of all of it at 14 years. That goes right through the whole business. The building was in about such condition as would ordinarily be expected at that

age, the top floor is worn out, and part of it worn through entirely. The way they put flooring in a mill, is to put down a plank twelve inches wide, and they put on top of that the ordinary flooring. I would consider the floors of the Huguley Mill would have to be re-laid; the lower floor is in very bad condition; it has swagged down this way in one place, and looks like the bottom is knocked out. The bottom floor has swagged down two or three feet. It would be difficult to say what that kind of space is considered to be worth in a mill. When I valued the Fulton Cotton Spinning Mills, the top floor is very extensive, it goes up 25 or 30 feet, and goes in all sorts of ways, and as I told Mr. Elsas, it was built for grandeur. I valued it at $1.50 to replace it; it costs that to put it there. The mill had been highly successful, and a highly successful mill is worth a great deal more than a bankrupt mill, and I put it at its value and took off the per cent, for wear and tear. Down below, they have got a basement, that is as well lighted as the entire Galeton Mill, and I think for about thirty feet on the inside. I valued that at sixty cents a foot. The mill is 200 feet wide and that would have been 30 feet on each side and 30 feet on the end. That would have left 140 feet. I valued that at thirty cents.

Now, to get right down to business, I should suppose that the mill building, with the character of machinery, that is, good cotton mill machinery of high speed, with spindles running 7 or 8 thousand at the limit,—such spindles as they have there, is not over about 5,600. The spindles, such as Mr. Elsas has in his mill, will run anywhere from 8 to 10 thousand revolution, and I presume that Mr. Lanier has not speeded his mill at less than 8 or 10 thousand a minute and there are 18,000 and 600 spindles at the Eagle & Phoenix and I speeded those at 8,000, the ultimate of those spindles at this mill, is 5,600. Now, taking the balance of it: the lappers, have them all first class, cards first class and machinery first class all the way through, the mill built on a modern

plan with modern lighting everything of that sort. A modern mill serving the purposes of the Huguley mill, I think it could be contracted to be furnished for $24.00 a spindle to-day.

Q. What number of spindles do you reckon are there?

A. I know the exact number of spindles because I counted them. It don't take long to count them. There are 5,700 spindles; that is to say the place for them is that much. Mr. Higginbotham says that they allowed the spindles to wear out, and there were some square space, and the bulk of it is down in the basement where I would not like to put machinery. It is very low and dark and hot and it right over the water. I suppose it is within two or three feet of the water, and in going all through the mill, I presume there is 25 per cent of the floor space of that mill that is unoccupied by machinery.

Q. What is the difference between a new mill, a modern mill such as you have described, in value such as you have described, and this mill such as you find it now?

A. At present time, the market is very close. This mill, as it is now organized, it would be impossible to run it except at a loss. It would be an elephant on one hand to undertake to run it as it is. It is of considerable more value than that, though, because somebody will want it for the purpose of improving it, and that gives it the value. I don't think there is a mill man in the United States that has got money and mill knowledge, who would be willing to pay anything for that mill, if he was compelled to run it as it is to-day. I would not take it as a gift, and I don't think any other man would. But, at the same time, you can take it and make it into a good mill, and you can do it at less than you could build one from the ground up but it will never be as good as a new mill, because it is the wrong height and wrong light, and then you have got to haul the goods 9 miles. The day for that has passed.

Q. What is the value of the property as it stands?

A. I should say, taking the wear and tear off, and taking the fact that John Jones or Richard Roe or others having knowledge and capital to buy it and reorganize it, I think the best it would be valued at $11 a spindle. Not in its present condition, but $11 a spindle to make it into a good mill.

Q. You think $11.00 per spindle is all it is worth?

A. I know it.

Q. Does that include the servant's houses and everything?

A. Oh, no, sir, I told you what that included.

Q. What do you think of the operative houses?

A. I went through each of them and took breakfast at 4 or 5 o'clock this morning at the superintendent's house. I noticed them and rode around and examined them, and I found the character of those houses to be about equal to the Eagle & Phoenix, and I think I had 150 just such houses,—the bulk of them being simply weather-boarded without any ceiling. The superintendent's house is built very good,—at that time, in 1866 I didn't go over all of them but I went over a great many of them.

Q. They are all alike, aren't they?

A. They are factory houses, yes, sir.

Q. Uniform in size, weren't they?

A. Oh, no, sir. The value of these tenement houses is to be taken in connection with the value of the mills. Outside of the mill, I don't consider tenement houses worth anything because there is no use for them. The value of these tenement houses, is based on going with the mill, as part of the mill plant, and as part of its value. There are 147 rooms and 44 buildings. That includes the dwelling of the superintendent's house.

Q. What is the value of the whole layout?

A. $10,890, that is liberal on the whole thing, considering the age and the make of them.

Q. Is there anything else in connection with the property that you desire to state?

A. Yes, sir. You take $11.00 per spindle, and in doing so, I would include all the spare space; the mill is in bad shape, and at that rate, that would make, $63,140.00 to be the present value of the mill. The tenement houses, $10,890.00. Now, the land includes the land around, that the factory stands on. We bought 39 acres in Augusta, and there is 69 acres about this mill, but there are 150 acres over in the island that divides this water. As I understand it, it had nothing to do with the mill except the mill owners ought to own it to control the water power and not to have somebody meddling with it. I estimated that the land was worth $5.00 an acre or $750. I was very greatly surprised at the quality of machinery when I went there. I rather expected to split that about in the middle but the valuation I have given would be its value on the basis that somebody should take it and re-organize it.

Q. What was the comparative value of the factory September 1st, 1892, assuming that this factory was sold 1892, would it be worth any more then than now?

A. I think a man with the ready cash might be able to get it a little cheaper now than then, probably five per cent. I think everything is softer now than then.

Q. Did you state Mr. Hill or did you not, that the figures you have given was a fair valuation?

A. No, sir.

Q. What is a fair valuation of it?

A. As it now stands, I don't know how to value it. It is only on the basis of improving it.

Q. What would it be worth just to take it by itself?

A. A person would have to have a special interest; it would take a special interest.

Q. That is what a lawyer would call speculative valuation; what is it worth now, to put it up and sell under the

hammer as it stands; the whole property as you have described it?

A. On the basis that it would be re-organized, it is worth what I stated; on the basis that it can not be re-organized, I don't think it is worth anything, that is to say the machinery, as it stands at present, it can not be run at all.

Q. It can't be run at all in its present condition probably?

A. I don't think it can. I don't know what they have done there, but I will guarantee that. It is the legitimate result.

Q. What other chances of employing that machinery in its present condition and running it as a factory?

A. In its present condition, there would be no chance at all. I don't think a man having money and experience would try to run it.

Cross Examination by Mr. Reed.

Q. What particular kind of goods did that mill establish to manufacture?

A. I think it is largely for imitation duck.

Q. Is that the same kind of goods the Eagle and Phoenix makes?

A. They make some duck at the Eagle and Phoenix. I built a duck mill in New Orleans larger than this one.

Q. What is the proportion of duck goods made at the Eagle and Phoenix?

A. Very small.

Q. Does the King Mill make duck?

A. No, sir. The Lane Mills of New Orleans make duck, and the Housey Mill in Alabama make duck.

Q. Have you had large experience with these mills that make duck?

A. I have built them. I engineered and built the tower at Tollosa Falls.

Q. Your experience have been with the other?

A. No, sir, I think I will average around pretty well on that.

Q. You have been connected with the Eagle and Phoenix for about 21 years?

A. About 21 years. I have been away from it three years.

Q. The most of your time in the last 19 years has been with the Eagle and Phoenix?

A. My contract with the Eagle and Phoenix was that I should look after that plant, and any outside mill engineering I chose to do, I could do it.

Q. The most of your time has been spent in Columbus?

A. Yes, sir.

Mr. Abbott: I wish you would identify that memorandum you have there and attach it to your depositions.

The memorandum referred to in the previous question in the shape of a report was identified by the witness, and same will be found hereto attached.

Exhibit to John Hill's Deposition.

River View, Ala.—Galeton Mills—Valuation.

This mill contains 5,740 spindles, with the accompanying machinery for the manufacture of cotton duck, single thread imitation goods, weights seven to twelve ounces to the yard.

The numbers of yarn adapted to be spun, warps No. 6 to 10, fillings from No. 3 to No. 6½.

There is a spare floor space in the mill building equal to about 25 per cent of its floor space, from top to bottom average. The building will therefore contain when full, 7175 spindles. The mill main building was built in 1866. The picker room 1881. Boiler lease about 1881. They are of substantial construction of low ceilings and general mill features of the dates of construction. The buildings are considerably out of repair. The machinery was put in at various dates, the greater bulk being about 14 years old

average. It is usual to estimate wear and tear and depreciation of buildings at about 2½ per cent a year and the uniform sale in machinery is 5 per cent a year depreciation of its original cost.

In addition to this, the advance of inventions and improvements, frequently cause machinery which is comparatively new to lose its value by reason of more economical application of labor. This has been particularly true on them the past ten years, and much of the machinery of this mill is antiquated and if placed on the market would find no purchasers at any price, for the reason above stated. The heterogeneous mixture of various makes of machinery and a want of uniformity and mutual adaptability in this mill is a source of depreciation and no expert would now think of organizing and combining machinery as has from time to time been done in this mill. The roller cards which produce about 50 per cent of the work of the mill. This class of cards are not now used in any modern mill in the United States and practically they are a great detriment to the character of the work.

The dam and water power give evidence of advanced age. The former to-day is leaking through it 60 per cent of the water above it and there is barely enough water to run the mill. It will have to be entirely rebuilt within a short time.

I estimate that a modern mill with all modern improvements in machinery and buildings of modern construction could to-day be built at River View after the class of work done in this mill including new dam and water power of approved style and real estate complete at not exceeding $24 per spindle and that this mill in its present condition of both machinery, building and power is to-day worth in an estimate, eleven dollars per spindle including the extra floor space, or $63,140.

In its present condition and with prevailing small margins in manufacturing I think this mill can not be run at a profit, and this valuation is only on the basis of re-organization and

large expenditure of money for its improvement. Just as it is it is difficult to assign a value for the reason that there is little prospect in its condition of its being run except at a loss. However, to give a value I estimate as above for mill and real estate and water rights, $63,140.

To this must be added the present value of tenements as follows, $10,890.

There are in all these tenements 145 rooms averaging 15 years old of which eight rooms are ceiled and 4 plastered, the remaining 135 are weatherboard ½ inch thick or boxed and stripped 1 inch thick, with no interior ceiling or plastering.

Valuation of mill and attachment.....	$63,140
Tenements	10,890
Islands of pasture lands 150 acres at $5 per acre..	750
	$74,780

Attest. JOHN HILL.

L. Lanier sworn for the defendent.—Direct examination by Mr. Abbott.

Q. Have you read Mr. Huguley's deposition filled in this motion?

A. I have.

Q. You have read what he states about new machinery being added, and the property value being increased, etc., state if you desire to, anything you wish to in connection, and in reply to what Mr. Huguley states?

A. He begins with the estimates or his version as to the cost of the property, and it is entirely in excess of the cost. I was connected with the Alabama & Georgia mills until 1881. He claims that he assumed management in 1882. He took it in 1881, and I resigned as treasurer in 1881 in June. He has had the mill since that time. Now, I think what has been given here, will establish about what it will cost or should have cost. I was contractor of those pick-

rooms, that is, I was not the contractor, but I let the contract, and that was not but $4,700, which he says cost $10,000.00. The balance of the estimates on the cost of the property, is about in that proportion, as 10 is to 47.

Q. His estimates running all through are in about that proportion?

A. Yes, sir, except for the main building. The main building didn't cost half of his estimate. As to the condition of the mill at that time, the net debt of the Alabama & Georgia mills when I resigned in June, 1881, was something over 9,000 and not 10,000 dollars; the net debt of the concern when the management was changed in July, 1888, at the time this statement was made up, which I have here, and which I filed as authenticated by the agent, was $36,800.00.

Q. What management was it under when it went into the hands of a receiver?

A. The management was changed. Mr. Harrington was secretary of the company, and the report shows that the net debt at that time, seven years afterwards, was augmented to $136,800.00. Now, that is a large outlay of $126,000.00 for machinery, but it would not be quite so inconsistent if the machinery which he says was in there, was there. Mr. Higganbotham has stated what is there and so has Mr. Hill. I verify what they state. That is, what is there. 2,300 spindles were added when this new company bought it, which increased it from 3,500 to 5,700 spindles. I will state that I am president of a good large cotton mill, I have just completed one of the most modern mills in the South, the construction of the mill being 15 or 20 per cent higher than the construction of the Alabama & Georgia mill on account of the more modern idea of making better mills, and in the way of putting in machinery that can be run 10 to 20 per cent cheaper, than that at the Galeton Mills, when it was new, and my cost of the Lanet (or Lanier) cotton mills, will not

be over $20.00 per spindle. Now, this mill will make the goods that are made at the Galeton Mills, as well as the machinery could have made under any circumstances, and that includes cottages painted inside and out, and modern in their appearance and comfortable as the average home. The stream power plant is more modern, I expect, than the average one in this country, and that included, makes it cost me $20.00 per spindle. As to Mr. Hill's statement as to what he could build a modern mill like the Galeton mill as to location of that mill, I would say that $24.00 per spindle is ample for it. I would very willingly agree to build a mill of that capacity for $24.00 a spindle. As for this property, I want to state that I did not to buy it. I would rather be out $1,000 than to have been the purchaser, but my effort was to force the property up to something that would pay us 100 cents for our bonds. The property has been run by managers who have never allowed an enterprise to fall on their hands, and we have been manufacturing for over 25 years, and with all ordinary care and close attention, it has cost us over and above all of our receipts from every source and from the very best management, $4,559 since we have had it. That much has been lost in running it. I will join Mr. Hill and say that there is no manufacturer, I don't care where, he is who can take the property in the condition it is in to-day and run it any other way. Now he claimed, Mr. Huguley does, that this property has been increased in value in productive capacity, 40 to 45 per cent. I will file here with you a sworn return of the superintendent of the mill in 1888, and that was at the time it was run by Mr. Huguley who managed it and I will show you the production then, and I will state that the production then, was in excess of what it has ever been since managed by the Galeton Cotton Mills; with all the improvements that have been put there, the production is less to-day, than it was in 1888 by nearly over 1,000 pounds per month.

Q. What is the value now of the machinery?

A. The machinery to a man who has not got money enough to run it, is entirely worthless,—I mean to run it without improving it, it is entirely worthless. I don't like to pass upon its present value under the circumstances, as I am the owner of it. I have got it insured for $65,000.00. We are now paying one per cent and there has been no change in equipment in particular. The equipment is as perfect now as it was then, with one exception, we are paying one per cent to-day, and one of the representatives of the association stated, that they increased nearly fifty per cent because of some misrepresentation at the time that it was rated at a fifty-five cents mill.

Q. By Mr. Brewster: What is the machinery worth, take it disconnected from the building and factory, and what is the machinery worth per spindle?

A. If you could take the machines out of that mill, it would be a great benefit if they were away.

Q. Take the machinery in the mill, consider its value for any purpose, you have given $20.00 as being worth that much to equip; now take this factory, and what is the machinery worth?

A. It would be out of the question to find buyers like that; I could not tell you.

Q. What would it be worth in its present shape?

A. I would say the machinery is worthless to any one to run in its present shape.

Q. Can you take that machinery and make modern machinery out of it?

A. No, sir.

Mr. Reed: Mr. Hill has stated that you can not, and I don't see any use in taking up time to go into that matter again.

Q. By Mr. Brewster: Can that machinery ever be converted to anything?

A. It can not be made valuable.

Q. You have got to replace it with new machinery?

A. You have got to put in new machines and different patterns, if you compete in the markets of to-day; that machinery can not be improved to be made as good as modern machinery.

Q. That property was bought at the sale by the marshal?

A. Yes, sir. I bought it at the sale by Marshal Buck, myself, who acted as commissioner. I bought it for Lanier, Dallas & Kirby.

Q. You bought it with the understanding that any bondholders who held bonds of the factory might join with you in the purchase?

A. Yes, sir.

Q. Did all of them join with you in the purchase?

A. They did not.

Q. What did you do with the property after you bought it?

A. After it was bought, I went into negotiations for the sale of the property and did sell it to the West Point Manufacturing Company.

Q. When did you sell it to the West Point M'f'g Co. before, or after the reversal of that judgment?

A. We sold it during the few days after the sale, and by October, 8th, the papers were made out and we had the whole transaction closed, as between Lanier and others and the Galeton Mills; that was closed within a week, and within the next week or by the first of October the entire transaction was closed between the stockholders of the Galeton Mills and the West Point M'n'f'g Co.

Q. Now, has the bondholders any interest whatever, in the property now?

A. Nothing at all, no interest whatever as individuals.

Q. Have they got any interest in it?

A. No, sir, none at all.

Q. Are they stockholders of the West Point M'n'f'g Co. the same as the stockholders in the Galeton Mills and were they at the time of this transaction?

A. Yes, sir.

Q. I mean the original stockholders of the Galeton Mills, are they the same as the West Point Company stockholders?

A. Dallas, Lanier and Kirby sold this property to the Galeton Mills Company immediately after the sale. Within a few days after that, the Company was organized and stock issued to the bondholders of the Galeton Cotton mills, who, after a sale had been made to the West Point M'n'f'g Co. were to transfer this stock to the West Point M'n'f'g Co., and they did do it, about the first of October. The Galeton Mills issued bonds to the stockholders of the Galeton Mills for the amount of their original bonds in the Alabama & Georgia Company.

Q. How much money did Dallas, Lanier & Kirby advance on that sale?

A. They advanced in accordance with the advertisement, $10,000.00 on the day of sale; on the day of settlement, ten days afterwards, the West Point M'n'f'g Co. loaned the Galeton Cotton Mills, for the purpose of paying court costs, lawyers, other expenses, and the bonds that were not represented in the purchase, the sum of $16,000.00.

Q. How much did the West Point Manufacturing Co. advance in this transaction in order to obtain title to the Galeton Cotton Mills?

A. $16,600.00.

Q. Were any of the stockholders in the West Point Manufacturing Co. different from the bondholders in the Alabama and Georgia Manufacturing Co.? Are the stockholders of the West Point Manufacturing Co. different persons from the bondholders in the Alabama and Georgia Manufacturing Co.?

A. They are, with the exception, perhaps of one individual.

Q. By Mr. Reed: Who is that individual?

A. I had some of those bonds.

Q. By Mr. Brewster: Did you have any bonds yourself?

A. Yes, sir, about $1,000.

Cross Examination by Mr. Reed.

Q. You state that you did offer property for yourself and for Kirby and Dallas, did not those three men represent the bondholders with the exception of about $7,000?

A. About that, yes, sir.

Q. Then the purchase was made by these three men for yourselves as bondholders, except that $7,000, wasn't it?

A. No, not under any positive understanding; they had the privilege.

Q. Of course I will not take time to read documents to you, but when you filed your petition for the confirmation of the sale, my understanding is, you had that statement in there; that you three bought this property for the bondholders, with the exception of this $7,000?

A. I don't vary the statement from what I made it before. They didn't know absolutely, or we didn't know absolutely, whether they were going in or not, and we submitted it to them, but they didn't come in.

Q. When you made your application for the confirmation of the sale in your representations to the court, you do not intend to say that there was a mistake in that, do you? I want to read you from this petition in which you state that you, as petitioners, Lanier, Dallas and Kirby, representing all the bondholders of said company, that you purchased the property embracing said decree on the first Tuesday, September, 1892, at public outcry, at and for the sum of sixty-six thousand dollars, that being the highest and best bid, and that in said purchase you acted as agent for the bondholders,

except of the owners of $7,000 of bonds, principal and interest; do you mean to contradict that now?

A. No, sir, I do not.

Q. Didn't I understand you a moment ago to state that you did not represent all of bondholders except this $7,000; that you really bought it for yourself and for the other two, that is, Kirby and Dallas?

A. There was no positive agreement with some of those bondholders, and with other third parties who were interested. They were all considered as parties to the purchase, but only a few of them came in, perhaps $1,500 or perhaps $2,000.

Q. How many of the bondholders, after you made this purchase, did you settle with?

A. In cash?

Q. Any way?

A. There were only $6,000 in bonds that did not go into the organization of the Galeton Cotton Mills, and we paid them their money.

Q. Excepting those, the others went in?

A. Yes, sir, they went into the organization.

Q. Is that the way they settled it; they went into the new organization?

A. Yes, sir.

Q. On what basis did you settle with the others?

A. At the amount of the bonds with interest.

Q. You took the bonds at par with interest?

A. Yes, sir.

Q. About how much interest did you allow them on the bonds?

A. That varied. Some of them had collected some interest and some had not; it was the interest then due.

Q. By Mr. Abbott: Don't the calculation in the books show that?

A. Yes, sir.

Q. By Mr. Reed: If I understand it, you three bought the property, and there were $7,000 of bondholders who would not go in with you, and you had to pay them their money, and you settled with them, counting their bonds at par, also allowing them whatever interest had accrued?

A. Yes, sir.

Q. By Mr. Brewster: You say you paid them, you mean they were paid in court?

A. They were paid in Colonel Buck's office. The money was in his office. They were paid out of the fund that came into court except $1,000 that was not then represented that was left in Col. Buck's hands.

Interrogatories of John C. Orrick.

Petition of Ala. & Ga. Mfg Co. & Huguley Mfg Co.

John C. Reed, Attorney at Law, 5th floor, Inman Building.

Dictated J. C. R. Atlanta, Ga., June 4, 1894.

Dear Abbott:—The testimony of Orrick, and of our Mr. Huguley is in the Clerk's office. Will you please join with me in consenting that both sets of interrogatories be opened. Please sign the consent below and return.

Yours truly,

COL. B. F. ABBOTT, City. JOHN C. REED.

We consent to open the interrogatories of Orrick, and of Mr. W. T. Huguley.

This June 4, 1894.

JOHN C. REED,
Solicitor for Petrs.

B. F. ABBOTT,
Of counsel for Lanier, et al.

United States of America, Northern District of Georgia. In the Circuit Court of the United States for the Northern District of Georgia.

To Horton Pope and W. Palmer Clarkson, Leo Ehrlick.

Whereas, There is a certain matter in controversy now pending and to be tried in the said Circuit Court, between

J. J. Robinson, trustee, etc., vs. Huguley M'f'g Co., et al., in re, petition of defendants to vacate sale, etc.

And Whereas, John C. Orrick is a material witness in said suit on behalf of the petitioners and can not attend said Circuit Court in person without manifest inconvenience.

Now Know Ye, That reposing special trust and confidence in your prudence and fidelity, you are hereby appointed, and you, or any two or more of you, are hereby authorized and required to cause the said John C. Orrick personally to come before you, and after being duly sworn, to examine him concerning the said suit, agreeably to the Interrogatories hereunto attached; and the answers to the same being plainly and distinctly written, you are to send the same, together with this writ, closed up under your hands and seals, to the Clerk of said Court, at Atlanta, Ga., to the court now in session.

Witness, The Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 24th day of April, 1894.

Seal U. S. Circuit Court, N. D. G.

O. C. FULLER, Clerk.

J. J. ROBINSON, TRUSTEE, &c., *vs.* HUGULEY M'F'G CO., ET AL. } In the Circuit Court of the United States Northern District of Georgia.

Petition of Defendants to vacate sale and for account of purchasers.

Interrogatories of John C. Orrick, who resides in St. Louis, a material witness for the petitioners in the above stated case, the answers to which to be read upon the hearing of said petition.

Interrogatory 1. Were you the attorney of any of the parties in the litigation in this case?

Interrogatory 2. Were you present or not at the United States Marshal's sale under the decree in this cause? Did

you make or not make any statement before, at the time of, or after said sale, that no appeal would be taken, or that the appeal had been abandoned, or that the purchasers at the sale would get a good title, or that there would be no further resistance to the decree by the Huguley Mfg Co.? State if, at such sale, you cancelled or did not cancel the insurance policies on said property, and why you did so? State whether or not after said sale, you ever notified L. Lanier, or any other person, that the company would have nothing further to do with the property. If you said anything to any person in reference to either of the matter herein inquired about, state precisely to whom you said it, and what you said.

Interrogatory 3. Who constituted the board of directors of said corporation at the date of said sale? Were you or any other person ever authorized or not, by any resolution of said board of directors, or any bondholders of said corporation, to make any announcement that the right to appeal had been abandoned, or that said appeal would not be prosecuted, or make any other of the statements above inquired about? Was Col. N. J. Hammond ever authorized or not to make any such statement by the board of directors or bondholders?

Interrogatory 4. If you say you were present at the sale under the decree in this cause, state whether or not you heard Mr. Frank Arnold make any announcement before the bidding commenced at said sale? If so, state whether it was made loud enough to be heard by those present or not. State whether or not Lanier, Dallas and Kirby were present at said sale, and whether they were near enough to hear said announcement or not. Examine the copy of paper attached marked exhibit "A," and state whether or not the announcement mentioned therein was the one made at said sale, if you say any was made.

JOHN M. CHILTON,
BIGBY, REED & BERRY,
Solicitors for Petitioners.

The foregoing interrogatories are objected to on the ground that they are leading.

DORSEY, BREWSTER & HOWELL,
B. F. ABBOTT,
Attys for Robinson, et. al.

Exhibit "A."—Sept. 7, 1892.

ANNOUNCEMENT.

"Notice is hereby given that any person or persons bidding for or buying this property, must do so subject to any and all equities and rights which will be hereafter set up by W. H. Huguley & Co. in behalf of themselves and the Huguley Manufacturing Company.

Atlanta, Ga., Sept. 7, 1892.

Service.

Service acknowledged, copy, notice and filing waived. Let Commissioner issue an application.

DORSEY, BREWSTER & HOWELL,
B. F. ABBOTT,
Attys for Robinson, et. al.

This March 16, 1894.

Cross Interrogatories.

1. Had you anything to do with the giving of the notice by W. T. Huguley at the time and place of the sale? You heard that announcement did you not?

2. Were you not the attorney for the Huguley Manufacturing Company, from the time it was organized? It had no property except the Cotton Mill did it? Did not Mr. Jannopoulo the President of the Company consult with you frequently from the time of the organization until the property was sold out as to the progress and success of the manufacturing business? Don't you know that the Company lost money by running the mill? Did not Mr. Jannopoulo tell you so? Did he not tell you as a matter of business information?

3. Did not Mr. Jannopoulo as President of the Company refuse to give bond and security and carry on the appeal first entered?

4. Is it not true that the Company gave its consent that W. T. Huguley might use the name of the Company in entering a second appeal? Is it not true that the Company did not employ counsel for that purpose, and that it is not responsible for their fees, and that the Company is not to pay any costs?

5. Is it not true that the second appeal was entered really by W. T. Huguley in his own name, and in the name of the Company inquired about and in the name Alabama & Georgia Manufacturing Co.? Don't you know this to be the fact?

6. Did not Jannopoulo tell you before the sale of the property on the 1st Thursday in September, 1892, that the Company would not further prosecute the case? Did he not tell you the Company would not or that he would not further prosecute the appeal or words to that effect?

7. The purchasers of the property claim that they were informed that the property would be sold from all litigation that the appeal filed had been abandoned? Did not Mr. Jannopoulo tell you that no further steps would be taken towards reversing the decree? Say exactly what Mr. Jannopoulo did tell you. Have you done so? If you can not give words give substance of the words. Have you done so?

8. Don't you know that the Huguley M'f'g Co., lost money by running the factory? Is that not the reason that it or Mr. Jannopoulo did not bid on the property. How much did Jannopoulo say it had lost?

9. If the company did not intend to abandon all effort to reverse the decree why did it let the property go to sale? Why did it cancel its insurance?

10. Don't you know that Mr. Jannopoulo received the percentage due him on his bonds? Did he not tell you so?

11. Did you not inform Col. N. J. Hammond prior to the sale that Mr. Jannopoulo or the company had decided not to appeal?

12. Has the Huguley Manufacturing Co., any property now, if so in what does it consist? Is it not true that the company is not engaged in any business?

13. Please state all that you know that will show that the company or Jannopoulo considered the litigation at an end before said sale? Have you done so?

Did not Mr. Jannopoulo tell you as Attorney, that he would not make any further effort to reverse the decree, and was not this before the sale was had.

DORSEY, BREWSTER & HOWELL,
B. F. ABBOTT, Sol. for Defts.

J. J. ROBINSON, ETC., *versus* HUGULEY MANUFACTURING CO. } In the Circuit Court of the United States, Northern District of Georgia.

STATE OF MISSOURI, City of St. Louis } *ss:*

By virtue of a commission issuing out of the Honorable Circuit Court of the United States for the Northern District of Georgia, to us directed, we have caused John C. Orrick the witness in said commission named, to came before us, and being duly sworn, true answers to make to the interrogatories and cross interrogatories to said commission annexed, deposes and answers as follows:

To the first interrogatory he answers:

I was Attorney for the Huguley M'f'g Co., one of the parties to this suit.

To the second interrogatory he answers:

I was present at the United States Marshal's sale under the decree in this cause. I did not make any statement before, at the time of, or after said sale, that no appeal would be taken, or that the appeal had been abandoned, or that the purchasers would get a good title nor that there would be no

further resistance to the decree by the Huguley M'f'g Co. That the matter of the appeal was largely in the hands of Judge Chilton, who with W. T. Huguley had practical control of the matter. On the date of the Marshal's sale, deponent was not advised as to what course would be taken as to the appeal. Judge Chilton and Mr. W. T. Huguley had that matter specially in charge, but deponent did not in any way make a confident of either Mr. Lanier or any of the attorneys on the other side as to what course would be pursued. All of them were comparative strangers to deponent. I never occupied confidential relations with any of them and I never did confide in them. I was the attorney against them, and not co-counsel with them. I remember after the sale to have seen the Insurance Agent at Atlanta and to have had some conversation with him about the cancellation of the insurance. That I was of the opinion that the sale of the property by the Marshal, would avoid the insurance, it operating as a transfer for a time at least, of the property to the purchaser at the Marshal's sale, and was of the opinion that it might be just as well to get from the agent what money I could out of the insurance for the benefit of my client. I was further of the opinion that, by the Marshal's sale, the purchaser at that sale would be entitled to the possession of that property in default of our giving a Supersedeas Bond, and I had no confidence in our ability to give that bond. I may have stated to some in interest with the complainant that, we would not resist the taking of possession by the purchaser under the Marshal's sale as we did not, but I never notified Mr. Lanier or any other person that, the company would not have anything further to do with the property, or anything to that effect. I have a recollection of saying to Mr. Lanier that, we would not interfere with him taking possession of the mill under the Marshal's sale. But I only said this, because I was of the opinion that, under the law I was powerless to prevent it.

To the third interrogatory he answers:

D. Jannopoulo, John C. Orrick, C. W. Harting, W. T. Huguley and John M. Clifton constituted the Board of Directors at this time. I, nor any other person was ever authorized by any resolution of the Board of Directors of the Huguley M'f'g Co., or any officer thereof or the bondholders of the Company that the right of appeal had been abandoned nor that said appeal would not be prosecuted. Nor did I make any of the above statements inquired about. Neither was Col. N. J. Hammond ever authorized to make any such statement, by the Board of Directors or the bond-holders here; I can not say as to the others.

To the fourth interrogatory he answers:

I can not state whether I heard Mr. Frank Arnold make any announcement before the bidding commenced at said sale, I do not know any such person. I have some recollection of some person who represented the Huguley M'f'g Co. or W. H. Huguley & Co., reading a notice to the effect as stated in Exhibit "A." I remember that Mr. W. T. Huguley was present at the sale and was very active in guarding the interest of W. H. Huguley & Co. The announcement that was made, was sufficiently distinct for all present at the sale to hear. I remember that Mr. Lanier and a Mr. Dallas were present at the sale. I do not remember Mr. Kirby, but it seems to me, that I heard his name or he was pointed out to me. I think the announcement as it appears in Exhibit "A" was read by some one at the sale and that I heard it. I don't know whether it was Mr. Frank Arnold or some one else who did the reading.

To cross interrogative one he answers:

I had nothing to do with the giving of the notice by W. T. Huguley at the time of the sale. I heard whatever announcement was made.

To cross interrogative he two answers:

I was the regular attorney for the Huguley Manufacturing

Company from the time it was organized. Other attorneys were employed as needed on occasions to assist. The Company had no property, except the Cotton Mill property, so far as I know. Mr. Jannopoulo, the President of the Company, consulted me frequently from the time the Company was organized until the property was sold, as to progress and success of the manufacturing business. I didn't run the Mill but helped to run the law suit, but I don't think the Mill made any money. I can't say of my own knowledge whether the Mill made or lost money. I know that Mr. Lanier was the chief instigator among the bondholders of the foreclosure proceedings. That the Huguley Manufacturing Company had deposited the interest money at the bank at Atlanta, Ga., and that he with others wrongfully refused to accept the money in payment of their coupons due at that time. That Lanier was interested in breaking down the Huguley M'f'g Co., as it was competitor of a mill which he managed a few miles off. So through the action of Lanier and others, the Huguley M'f'g Co. had to run its mill with this foreclosure proceeding pending brought on by Lanier and other bondholders. This situation made it the more difficult for the Huguley M'f'g Co. to make money in operating its mill. Mr. Jannopoulo in consulting with me as a director, explained to me that the Company lost money, largely by reason of the destruction of its credit by the permature institution of this foreclosure proceeding.

To cross interrogatory three he answers:

Mr. Jannopoulo as president of the Company did not refuse to give bond and security and carry on the appeal first entered. On the contrary, he always as president of the company expressed his entire willingness to take an appeal and informed Mr. W. T. Huguley in my presence that he would sign all papers required as president of the company to perfect the appeal. It was hoped by Mr. W. T. Huguley that he could get some individual or corporation at Atlanta who would become surety on the bond.

To cross interrogative four he answers:

I do not remember whether the company gave its consent that W. T. Huguley might use the name of the company in entering a second appeal. It is not true that the company did not employ counsel for the purpose of the appeal. On the contrary, Judge J. M. Chilton was here in St. Louis, and he consulted with me as counsel for the company to look after this whole matter of the appeal. Mr. W. T. Huguley was here with him; they were acting entirely in accord with each other and the company was in entire sympathy with Judge Chilton and Mr. Huguley in their efforts to get this case up to the Court of Appeals. I know of nothing that was done in that whole matter either by Mr. Huguley or Judge Chilton that was not authorized. I know of no agreement or understanding whereby the Huguley Manufacturing Co. was not to be responsible for the fees of the counsel or costs.

To cross interrogatory five he answers:

I do not know that the general appeal was entered really by W. T. Huguley in his own name and in the name of the Huguley Manufacturing Company and the Alabama & Georgia M'f'g Co. I don't know this to be the fact. I don't think I have seen any of the papers, but that whole matter was left particularly to Judge Chilton and Mr. Huguley. The Huguley M'f'g Co. being entirely willing to get to the Court of Appeals through their aid.

To cross interrogatory six he answers:

Mr. Jannopoulo did not tell me before the sale on the first Thursday in September, 1892, or at any other time that the company would not further prosecute the case. He never told me that the company would not prosecute the appeal, or words to that effect. On the contrary, he expressed to me the conviction that the company had been greatly wronged by the action of the bondholders, that the decree was wrong and he hoped through the aid of such assistance as Mr. Hu-

guley might obtain at Atlanta the company would be able to give a bond.

To cross interrogatory seven he answers:

I do not know what the purchasers claim as to the property being sold free from all litigation. The Huguley Manufacturing Company certainly never informed them nor any body else that the appeal had been abandoned. Mr. Jannopoulo never told me that no further steps would be taken towards reversing the decree. I have given Mr. Jannopoulo's position as president of the company on this subject. I can not give his exact words, but the substance of what he said on this subject is as follows:

He was as President of the Company anxious that the appeal with bond should be perfected, and hoped that Mr. Huguley whose family was more largely interested in the stock, would succeed in getting a satisfactory surety on the appeal bond.

I can say that the Huguley M'f'g Co., of which Mr. Jannopoulo was the president, never abandoned the appeal or informed purchasers or any body else to that effect.

To cross interrogatory eight he answers:

I do not know that the Huguley M'f'g Co., lost money by running the factory; I had nothing to do with the details or running of the business, but my information is that it did lose money caused largely by these foreclosure proceedings. I do not know why the Huguley M'f'g Co., or Mr. Jannopoulo did not bid on the property. If Mr. Jannopoulo ever told me what amount the Company lost, I do not remember the amount.

To cross interrogatory nine he answers:

The Company let the property go to sale because it could not prevent it. It had neither the money nor the credit to stop the sale. I have explained about the cancellation of the insurance. There had trouble prior to the sale, about the insurance. The foreclosure proceedings had frightened

the Insurance Companies, and several of them as I now remember had cancelled their Insurance Policies prior to the sale. Then the sale of the property by the Marshall under the terms of the policies, as I now recollect, avoided the insurance.

To cross interrogatory ten he answers:

I do not know personally that Mr. Jannopoulo received the per centage due him on his bonds. I think Mr. Jannopoulo personally, but not as President of the Huguley M'f'g Co. owned not more than one or two bonds and it is quite likely if any per centage on the bonds was sent to him, he received it.

To cross interrogatory eleven he answers:

I have no recollection of informing Col. Hammond prior to the sale that Mr. Jannopoulo or the Company had decided not to appeal, but I do remember to have been informed by Col. Hammond about the time of the sale, of Mr. Huguley's failure to procure for the Company up to that time, a surety for an appeal bond. It was always understood between us that the Huguley M'f'g Co. was ready to sign any paper pertaining to the perfecting of an appeal. The trouble was as to the surety on the appeal bond which would stay the sale.

To cross interrrogatory twelve he answers:

I have stated as fully as I can Mr. Jannopoulo's position in this whole matter except I may add that he personally was a small stockholder in the Huguley M'f'g Co. and being a minority stock holder he deferred largely in his conduct as President of the Company to the wishes of the other stock holders. In the matter of the appeal I could not state any facts that would show that the Company or Mr. Jannopoulo considered the litigation at an end before said sale. Mr. Jannopoulo in speaking to me about the decree could only speak as President of the Huguley M'f'g Co. to its attorney. He never told me that the Company would not make any

further effort to reverse the decree at any time before the sale was had and the Company certainly did not occupy such relations to the complainants as would warrant concessions or agreements of that character.

JOHN C. ORRICK.

Answered, sworn to, and subscribed before us this 26th day of May, 1894.

W. PALMER CLARKSON, [SEAL], Commissioner.
LEO EHRLICK. [SEAL]. Commissioner.

Deposition of N. J. Hammond.

In the circuit court of the United States for the Northern District of Georgia.

THE HUGULEY MANUFACTURING CO., THE ALA. & GA. M'F'G CO., AND W. T. HUGULEY, *versus* J. J. ROBINSON, TRUSTEE, L. LANIER ET AL. } Motion, Etc.

Deposition of N. J. Hammond, a witness for the plaintiffs in the above stated cause, taken without notice and by consent of counsel, on April 26th, 1894, at Atlanta, Georgia, before H. L. Parry, commissioner, in the presence of John C. Reed, esq., appearing for the plaintiffs, and Messrs. B. F. Abbott and P. H. Brewster appearing for the defendants; the said witness being first duly sworn, deposed and said as follows:

Direct Examination by Mr. Reed.

Q. In the case of J. J. Robinson, trustee, against the Alabama & Georgia Manufacturing Company, the Huguley Manufacturing Company and W. T. Huguley, were you of counsel for any party in that case?

A. I was counsel for the corporation of which D. Jannopoulo was president, and which had bought the factory under the original foreclosure.

Counsel, at this point, stipulated that the same agreement as to reserving the right to object to testimony which was entered into as to the depositions of L. Lanier, B. F. Abbott, and F. A. Arnold, heretofore taken in this cause, should also apply to this deposition.

Q. Isn't it a fact that there was once an appeal entered, after the decree in that case, and the appeal was abandoned?

A. I, as counsel for Jannopoulo, president, made out papers for an appeal, and it was abandoned because Jannopoulo did not secure my fees, or declined to pay my fees, saying that he would not litigate it further. He, at one time, was hesitating about it, but afterwards determined that he would not carry it on, but that Huguley could take up the appeal, if he saw proper. I then waited sometime on Huguley to see if he could give security to pay the costs, and secure my fee; he failed, and I quit. After I determined to quit, or pending the time when I was considering it, Mr. Chilton, of Alabama, became interested in the matter and that is the last I know of it, except by hearsay.

Q. Whom did you represent specially?

A. I never did represent anybody but Jannopoulo, president.

Q. You did not represent Mr. Huguley?

A. No; he was not my client, but I agreed finally that I would go on with Jannopoulo's appeal if Huguley would furnish the security and pay the fee, Jannopoulo having consented thereto.

Q. What efforts, if any, that you know of, were made to furnish the security?

A. Well, I only know that Mr. Huguley told me and what I got from letters about that. The American Surety Co., which we represented, sent certain blanks here to be used by Huguley, which I sent to Huguley by letter.

Q. At what time, in relation to the sale, was that appeal for which you prepared the papers, abandoned?

A. I am not sure about the dates; indeed, I have no memory about them. I have had to refresh my mind on the subject by letters. The date of the last letter I find on the subject, on my book, to Jannopoulo, was August 12th, 1892.

The sale, as I now recollect it, occurred on the first Tuesday in September, 1890.

Q. What happened about the date of that letter of August 12th?

A. I notified him that I was going to quit, unless an arrangement was made, and to telegraph me whether to go on at his expense or not. He did not agree to pay my expenses, and, so far as I now recollect, I quit then, about the middle of August.

Q. Were you present at the sale?

A. I was.

Q. Whom did you represent there, if anybody?

A. I represented Mrs. Sallie Huguley. Prior to the sale she had sent me a letter from Dallas, one of the complainants, and desired my advice about it. I declined to advise her on the ground that I was then trying to stop the sale by proceedings of appeal. Afterward she came here and, finding that the sale was going on, she consulted me about whether she should join Dallas, Lanier and others in a joint purchase, or whether she had better take her share on certain bonds that she had, I think five one thousand dollar bonds; I am not sure about that, but that is the neighborhood of it; or it may have been it was eight $500.00 bonds; about four thousand and some dollars, I believe. I advised her to take a share of the proceeds, and she left her bonds in my hand for collection. I had them at the day of the sale, and during the time that the property was being put up, at the north door at the court house, she and some other lady, whom I do not now recollect, stood at the corner on the sidewalk, at the corner of the tax office there, on Hunter street, so that she was in full sight of the sale, and of us. We were stand-

ing, myself, Dallas, Lanier and others, were standing on the steps where the crier was selling the property.

Q. Did you make any bid at that sale?

A. I did make a bid and my recollection is it was the second bid—$65,000.00.

Q. For whom were you bidding?

A. For my individual self.

Q. What was the object of your bidding?

A. I had no $65,000, nor much part thereof; I was bidding wholly to keep Mrs. Huguley's bonds from being sacrificed by having the property knocked off at a small price. Somebody—Lanier or Dallas, I think Dallas, started the property at some bid, and I then bid something like $65,000.00 I believe that was the price I bid, and some one of them raised the price, perhaps a thousand dollars more. I then stepped to the person bidding whoever he was, and said to him "I am not trying to buy the property. I am not trying to run it up on you, but if the widow" (they knew whom I represented—the widow Huguley) "will be allowed to come in with you at your bid, if she wants to, or take her share of the proceeds, as she prefers, I will bid no more." They said "she may take her choice; come in or take her pro-rata share," and I bid no more and the property was knocked off to whoever the bidder was, who I understood was bidding for Lanier, Dallas and others, the combination she had been talking to me about going in with.

Q. Did you have any conversation with Mr. Lanier before the sale that day?

A. Well, I don't recollect that I did, and yet I suppose I may have done so. I remember that Mr. Orrick, who had been my associate counsel, who lived in St. Louis, and being Jannopoulo's adviser there, and who was down at Hamilton when he bought the mill under the first foreclosure, I remember he came and was here that morning, but whether I saw him the day before or not I do not remember; I think not.

I had supposed he came intending to buy for Jannopoulo, because I understood Jannopoulo had large money advanced, and having bought it before, but I think about half an hour before the sale he told me that Jannopoulo did not intend to buy through him at all, and that he intended to make no efforts towards bidding, and so far as he knew there would be no bidders but the Lanier party. Lanier, Dallas and others were about there, and I may have said something to them; I don't know. I don't recall any conversation except what I have repeated at the bidding. I do not know of any reason why I should have talked to Lanier and others, because I was trying to keep secret from them the fact that I intended to bid for the property. They all knew I represented the widow Huguley, I think, even before I said that to them; I think I had told them that.

Q. I want to call your attention to one subject and see if it will refresh your recollection. Do you remember that you said, either to Mr. Lanier or in his hearing, or in the hearing of any one who was probably interested with him, that the purchaser there that day would get a good title?

A. I don't remember anything about it. I supposed the purchaser would or I would not have bid myself, for I would have taken the property if it had been knocked down to me. I understood at the time I was bidding, that the judgment was a valid judgment and that there was no supersedeas. I bid on that idea and I thought the purchaser would get a good title. I may have said so, but I do not recall it at all. I do not see any reason why I should have been talking to Mr. Lanier. We were on adverse sides of the case, until we got together in the Mrs. Huguley matter.

Q. What had been your relations before that? Isn't it a fact that you had been engaged in some litigation against him just before that?

A. I don't remember. I did have a case in which I had sued him for Mrs. Sallie Huguley, but I think it was after

that that was tried. I don't recall the dates. There was no unkind feeling between us, and yet there was no sort of intimacy between us. I had usually scored him like any other lawyer.

Q. He didn't consult you formerly on the question?

A. No, sir. He had no right to consult me at all. I was under no sort of obligation to give him advice, nor had he any right to rely on me for advice or opinion.

Q. Well, before that sale, and after the appeal had been abandoned, that you mentioned, do you recollect ever stating to Mr. Abbott that there would be no second appeal? Did you ever state that to anybody?

A. What do you mean by second appeal?

Q. I mean that there would not be a renewal of the appeal; the time was out for an appeal, wasn't it?

A. The time was out for a supersedeas, perhaps, I think it was out, perhaps on the 28th of August, but I am giving that from the character of my correspondence; but I didn't know what was going to happen in the future. I talked with Mr. Abbott like one lawyer would talk with another, on the opposite side of the case; I told him that my client, Jannopoulo, would not pay my fee, and wouldn't stand the security, and I didn't believe Huguley could; that he had consented that Huguley might, but that I didn't believe he could; he was unable to do it; but as far as my telling him what I intended to do, I do not know about that.

Q. What I want to ask you is this: if you ever said to Mr. Abbott, or to Mr. Lanier, or anybody, Mr. Brewster, or anybody interested with them, like they are, that there would be no further appeal made in the case?

A. No; I had no right to say anything of that sort. I stated what I understood to be a situation, that my client declined to go into it, and as far as I was concerned I was done, and that Huguley had tried to come into it, but could not. Now, in what sort of words I put that, I do not know.

Q. But you never contemplated such a thing as that there might be a renewal of the appeal?

A. I was not thinking about anybody coming after me at all. I will state this in fairness to all parties. Nobody, so far as I know, on the other side, had any right to act upon anything I said. I was giving my conclusions about what I intended to do.

Q. Did you hear any proclamation made at the sale, the last sale, that looked like an objection to the sale, or a warning?

A. Somebody came there and gave a notice at the instance of Huguley, they said. I believe it was one of the Arnolds, Frank Arnold came with some sort of notice.

Q. Did you hear the notice?

A. Yes, but I don't remember what it was.

Q. You understood it at the time?

A. Yes.

Q. Was it given so that the people could understand it?

A. Oh yes, everybody heard it.

Q. Was that before or after the sale?

A. Before the sale began, as I recall it.

Cross Examination by Mr. Abbott.

Q. You represented, in that litigation, all the defendants except W. T. Huguley, didn't you?

A. I don't remember that I had any client, but one, and that was D. Jannopoulo.

Q. He was not a party, was he?

A. His company was. I represented the corporation of which he was President. If there was any other defendant I represented I do not recall it.

Q. Didn't you file the answer of the Alabama & Georgia M'f'g Company?

A. I don't remember, perhaps I did. The record will show.

Q. You represented all the defendants?

A. I represented old man Huguley, I believe; but the record will show whom I represented. The real person who had the money in it was D. Jannopoulo, the president of the corporation, and with him I had my correspondence. I had always recognized him as my client.

Q. He was not a party himself?

A. No, but his Company was.

The foregoing deposition was taken before me, as stated in the caption, the answers reduced to writing by me, and I certify that I am not interested in the cause, nor of kin or council to either of the parties.

[Seal]. H. L. PARRY, Commissioner.

Depositions of Lanier, Abbott and Arnold.

In the Circuit Court of the United States for the Northern District of Georgia.

THE HUGULEY MANUFACTURING CO., THE ALA. & GA. M'F'G CO., AND W. T. HUGULEY, *versus* J. J. ROBINSON, TRUSTEE, L. LANIER ET AL. } Motion, Etc.

Depositions of L. Lanier, B. F. Abbott and Frank A. Arnold witnesses for the defendants in the above stated cause, taken without notice and by consent of counsel, on the 19th, day of April, 1894, at Atlanta, Ga., before H. L. Parry, commissioner, in the presence of Judge J. M. Chilton, Judge Allen Fort and J. C. Reed, esq., representing the plaintiffs, and B. F. Abbott, esq., and P. H. Brewster, esq., representing the defendants.

L. Lanier, being first duly sworn, deposed as follows:

Direct Examination by Mr. Abbott.

Q. You are one of the defendants in this motion of W.

T. Huguley, The Huguley Manufacturing Company and The Alabama & Georgia Manufacturing Company against J. J. Robinson, yourself, Kirby and others?

A. Yes, sir.

Q. What interest, if any, did you have, or claim, on the property of The Alabama & Georgia Manufacturing Company?

A. I held some of the bonds of the company.

Q. Were you present at the sale of the property of The Alabama & Georgia Manufacturing Company?

A. I held some of the bonds of the company.

Q. Were you present at the sale of the property of The Alabama & Georgia Manufacturing Company, under a decree of the United States Circuit Court,—the sale had in Atlanta in September, 1892?

A. I was.

Q. Was or not any representative of The Alabama & Georgia Manufacturing Company, or of The Huguley Manufacturing Company, present at that sale?

A. Yes, sir.

Judge Chilton: We object to that on the ground that it is illegal, irrelevant and incompetent.

Q. Who was present, if any one?

A. Col. N. J. Hammond was present.

Judge Chilton: We object to that question also, and move to exclude the answer.

Q. What day did you come to Atlanta, prior to the sale?

A. My recollection is it was the afternoon before the sale.

Q. If you had any conference with Col. N. J. Hammond or Mr. Orrick, or both, state at what time that conference was had, and what was said?

Judge Chilton: We object to that question on the ground that it is incompetent, first, to show that we were not entitled to an appeal in this case; second, that no statement by Col. Hammond or by Mr. Orrick will affect the movants to

set aside the sale, under the decree of the Court of Appeals entered in this case; third, because no authority is shown on the part, either of Col. Hammond or of Mr. Orrick, to make any declarations that would waive the rights of movants, or estop them from the relief prayed in the petition.

Q. What had Col. Hammond had to do with the litigation which resulted in the decree under which the sale was about to be had?

Judge Chilton: We object to that question on the same grounds as above stated, and on the further ground that the records themselves show.

Col. Abbott: I want to prove that he is the same Hammond.

Q. What had Col. Hammond to do with that litigation in the United States Court?

A. All that was done by an attorney, so far as I know—as attorney in the case of defendants.

Q. Who else appeared there as attorney for the defendants?

Judge Chilton: We object to that question also.

A. Young Orrick was there, I suppose as an attorney, too.

Q. Was that the Mr. Orrick who was present at the sale, the same Orrick that appeared in the litigation in the United States Court?

A. The same one; yes, sir.

Q. State what conversation you had with Mr. Hammond or Mr. Orrick, with either or both, prior to this sale and after this sale before the confirmation of the sale?

Counsel here entered into a stipulation that either side might reserve the right to move to exclude any portion of the testimony on any other grounds than that the questions are leading, and that in making such objections they may then specify the particular grounds of objection as if made before the witness answered; and that counsel might have this right at any time prior to the hearing of the motion.

A. Col. N. J. Hammond approached Col. Abbott and myself, immediately preceding the sale, at the court house, and was telling us of an instrument that had been typewritten on one of his letter-heads, showing some rights that Mr. W. T. Huguley expected to set up under some instrument he held, after this sale was made, and he objected, and stated to us that he reproached Mr. Huguley for using his stationery, and tore his name from the top of it; and then the conversation as to the sale of the property, and the title, was discussed, and he told me that he considered the titles to be given under this sale as perfect. The remainder of the conversation was in a general way; nothing particular.

Q. If Mr. Hammond, in that conversation, said anything to you about his having reproached Mr. Huguley for writing that notice on his stationery, what did he say, if anything, about his (Hammond's) being present lending his assent to the sale while this paper was being circulated, written on his letter-head?

A. That seemed to be one of the objections to that instrument; it was affecting.

Judge Chilton: We object to the witness stating what seemed to be.

A. (Cont'd) He stated that it was calculated to affect the price of the property—the price that it might sell for, when he was doing his best to make the property sell for as much as possible. That was, in substance, his words.

Q. Did you have any other conversation before the sale?

A. Yes, sir.

Q. With whom?

A. With Col. Hammond.

Q. What did he say?

A. He again assured me that the titles to the property would not be affected by this notice, as he claimed it was entirely a personal notice and had no legal affect upon the sale of it.

Q. Did you hear that notice read?

A. I did.

Q. What was the contents of that notice?

A. As I remember it, it was a notice referring to some rights that they had under some agreement.

Q. That who had?

A. That W. H. Huguley & Co. had, or the Huguley Manufacturing Company; that they would set up.

Q. As against whom?

A. Against the Huguley Manufacturing Company.

Q. But the notice claimed that these rights might by set up as against whom, or what?

A. It was the rights of W. H. Huguley & Company under some agreement with the Huguley Manufacturing Company.

Q. What reference did it have to the property in this litigation?

A. Well, really I didn't notice that it had any.

Q. I will ask you if the notice referred to any property?

A. It referred to the sale of this property; that they would set up their rights under some agreement they had with the Huguley Manufacturing Company.

Q. Against what?

A. Against this property.

Q. Who was that claim asserted by?

A. I don't know what attorney read it.

Q. Who were the parties claiming to have any rights?

A. W. H. Huguley & Company and W. T. Huguley.

Q. Is that the Mr. Huguley who is present here—W. T. Huguley?

A. Yes, sir.

Q. Who are W. H. Huguley & Co.?

A. W. H. Huguley, J. H. Noland and W. T. Huguley, as it was known at that time.

Q. That was the firm?

A. Yes, sir.

Q. Who read the notice?

A. I don't know the attorney. I understood he was an attorney.

Q. Who bid at that sale?

A. Col. N. J. Hammond and myself.

Q. Do you remember who made the first bid?

A. He made it.

Q. What was the amount of his bid?

A. $65,000.

Q. How many bids were made?

A. Only two.

Q. You bid it off?

A. Yes, sir.

Q. Who, if any one, was in the bidding with you? Who did you bid it off for?

A. Well, I was bidding to protect the bondholders of the property.

Q. Who were your partners in that bidding off?

A. Well, all of them who were interested in the bonds, except, perhaps, two or three bondholders.

Q. You were acting for the bondholders?

A. I was.

Q. Who else?

A. Mr. A. T. Dallas.

Q. And who else?

A. J. T. Kirby.

Q. Well, was or not Mr. Orrick present at the time of that bidding?

A. He was.

Q. After the property was bid off, what conversation, if any, did you have with Mr. Orrick, or with Mr. Hammond?

A. Mr. Orrick approached me after the sale and notified me, in a formal way, that he was then going to the insurance office and he expected to cancel the insurance on the prop-

erty and suggested that I might go up with him and insure the property so as to leave it protected; that he expected to cancel all the insurance the Huguley Manufacturing Company had on it.

Q. Who was he representing?

A. He was representing the Huguley Manufacturing Company.

Q. In whose name was it insured?

A. In the name of the Huguley Manufacturing Company.

Q. If he said anything, now, about that company not having anything further to do with the property, state what he said?

A. He stated at that time that their company would have nothing more to do with the property, and he was then going to cancel the insurance.

Q. What did you do after that, with respect to the insurance?

A. I took a draft home and had insurance placed on it at our office.

Q. If you had any other conversation with Col. Hammond after this property was knocked off, on the same day, state what that conversation was?

A. Col. Hammond and Mr. Orrick and I walked away from the court house together, and he reiterated his former statement that the titles to this property were perfect, considered as good as to his own property.

Q. Now, if anything was said by Col. Hammond or Mr. Orrick, about expediting the matter of confirming the sale, state what it was?

A. That was ten days afterwards.

Q. Well, at that time, if these gentlemen said anything about expediting the matter of confirmation, state what they said; do you remember?

A. No, sir, I do not.

Q. Were you present when the decree of confirmation was passed?

A. I was.

Q. Was Col. Hammond present?

A. Yes, sir.

Q. What, if anything, had been done in the meantime, as to ascertaining the amount of principal and interest due upon the outstanding bonds?

A. A schedule had been made up of the bonds with the interest added, on all of the bonds.

Q. Who made it?

A. That was made by Dallas and myself, for the bondholders.

Q. Was it or not submitted to anybody?

A. It was, at the time of the accounting here, between Col. Hammond and Mr. Buck.

Q. Col. A. E. Buck?

A. Yes, sir.

Q. State if Mr. Hammond saw the statement and whether he examined it?

A. He did, and went over the calculations.

Q. What did Col. Buck have to do with it?

A. Col. Buck was the crier of the property; he sold it. He in connection with Col. Hammond and myself, took an account of the bonds, calculated the interest on these that had passed the coupons, the date of the coupons, and made a complete statement of the matter as between all the bondholders.

Q. Do you know whether the Huguley M'f'g Co. held any bonds of the Alabama & Georgia Manufacturing Company?

A. No, sir. There was a bond of a thousand dollars owned by Mr. Jannopoulo; it was understood that he owned a thousand dollars of those bonds.

Q. Well, who was Mr. Jannopoulo?

A. He was the President of the Huguley Manufacturing Company.

Q. What become of that bond?

A. It was paid by Col. Buck, through the American Trust & Banking Company, of this city.

Q. Was that one or two bonds?

A. It was two bonds, I think, of a thousand dollars each.

Q. What attorneys, if any, representing the defendants, were present at the confirmation of the sale?

A. Col. N. J. Hammond was present.

Q. What objection, if any, did he make to it?

A. None.

Q. Now, Mr. Lanier, what effect or influence, if any, did the statements of Mr. Hammond and Mr. Orrick, and their presence in court when the decree was taken confirming the sale, have upon your paying the money on the confirmation of the rule?

A. It was entirely assuring to me that I was taking no risk whatever in paying the money that was required, $10,000.00.

Q. If anybody representing the defendants said anything to you about abandoning the former appeal, the first appeal that was then pending, the appeal entered in July, immediately after the decree was entered, state what it was?

A. All I know about that was I knew the first had been abandoned, but nothing that I remember being said at the time.

Q. Well, at any time?

A. At no time. I had been assured by you and Col. Brewster that it had been abandoned.

Q. Well, I will ask you if you had any assurance from Col. Hammond that the appeal had been abandoned?

(No answer).

Q. State whether or not you would have bid on that property, purchased it and paid your money for it, if it had not been for the assurance so made by defendant's counsel?

A. I would not.

Q. Were you present in court when the original decree was rendered by Judge Newman?

A. No, sir.

Q. State what that property was worth at the time of the sale Mr. Lanier?

A. Well, I considered the price it brought a fair price.

Q. That is for the whole property?

A. Yes, sir.

Q. What is it worth now? What could it be sold for?

A. I question if it would bring within $20,000.00 of it.

Q. Suppose it was put up at public auction, in this city, by consent of who ever had a claim, or ever proposed to have a claim, what could it be sold for?

A. For cash money?

Q. Yes, sir.

A. I do not believe it would bring $40,000.00.

Q. When these bondholders purchased the property what did they do with it?

A. They organized and sold to the Galeton Cotton Mills —a Company that was organized.

Q. Did any person have any interest in the Galeton Cotton Mills who were bondholders or were interested in the original purchase?

A. No, sir. The organization was effected by those interested in the purchase.

Q. What interest, if any, have the bondholders of The Alabama & Georgia Manufacturing Company in The Galeton Cotton Mills now?

A. None now, except as bondholders.

Q. Had they, at the time of the reversal of the judgment by the Court of Appeals?

A. None whatever.

Q. Had they or not at the time of the entry of appeal?

A. No, sir; it had been sold.

Q. There was some cash paid on that sale, wasn't there?

A. Yes, sir.

Q. Who paid that cash?

A. It was paid by the West Point Manufacturing Company.

Q. How was that money secured afterwards? Was there or not any security given on The Galeton Company property for the bonds?

A. A trust deed was given to secure the bonds.

Q. Is that mortgage still subsistent and outstanding?

A. Yes, sir.

Q. And the bonds, too?

A. Yes, sir.

Q. What is the amount of the bonds?

A. $65,000.00.

Q. Do you desire to make any further statement, before the cross examination begins, as to what Mr. Orrick said to you?

A. I want to make this statement, that the question was asked Mr. Orrick if his company, the Huguley Manufacturing Company, would make any further resistance in this case, and he assured me they would not. That was at the time this conversation occurred in regard to the insurance.

Q. Did he use any metaphor in respect to that?

A. Well, he was positive there would be no further resistance.

Q. What did he say about a ship, if anything?

A. That was my part of it.

Judge Chilton: Without waiving any objections to be interposed to the testimony in chief, the petitioner propounds the following cross interrogatories:

Cross Examination by Judge Chilton.

Q. Mr. Lanier, who furnished to your solicitors the facts on which they predicated your answer in this case, to this motion and petition?

A. Who furnished the information as to facts?

Q. Who furnished to your solicitors in this case the information as to facts on which your answer is predicated?

A. Well, I suppose they are familiar with the whole matter and the facts in the case.

Q. I am not asking about your present counsel, but before this petition—the answer to this petition, was filed, there was a conference with your attorneys?

A. Yes, sir.

Q. And who furnished them the facts or information on which this answer was based,—did you?

A. No, sir.

Q. Look at that answer, purporting to be filled in this motion by yourself, Dallas, Kirby and The Galeton Cotton Mills, and say who furnished to your solicitors the facts stated in your answer as to the conversation with Orrick and Hammond, and the other facts stated in the answer? You are the man who gave the information on which the answer was filed?

A. Well, I don't suppose any of the others had any talk with them at all.

Q. Well, you read the answer put in, or heard it read?

A. I started to read it.

Q. But you have read it before, or heard it read?

A. I will read it and see now. (Witness begins to read the answer.)

Q. Well, is it necessary to read it now in order to answer the question as to whether you have read it or heard it read?

A. I have heard it read. I took it up as he——

Q. Well, you have heard it read long prior to this investigation, and before it was filed, haven't you?

A. Yes, sir.

Q. Some of these conversations which you had with Col. Hammond and Mr. Orrick took place, as I understand it, before the sale, and there were other conversations after the sale?

A. The conversation with Col. Hammond was before the sale.

Q. Didn't you have any with Col. Hammond after the sale?

A. Yes, sir.

Q. Then you had it before and after the sale?

A. But not with Mr. Orrick.

Q. Your conversation with Mr. Orrick was after the sale?

A. Yes, sir.

Q. And you had none with Orrick before the sale at all?

A. No, sir, I don't know that I had any conversation with him. If I did it was not pertaining to this matter.

Q. So no representations made by Col. Orrick to you influenced you to become a bidder at the sale if they were not made until after the sale was had?

A. No, sir.

Q. The conversation was altogether with Col. Hammond; that is the only one that influenced you in making the bid?

A. Prior to the sale, yes, sir.

Q. Where did you get the money that you paid in on the sale?

A. The $10,000.00.

Q. Yes.

A. It was brought here by a party.

Q. Brought here how?

A. From West Point.

Q. You brought it here?

A. Yes, sir.

Q. Well, that is not answering my question as to where you got the money?

A. Well, it was brought here as the money of A. T. Dallas and L. Lanier.

Q. That is not answering my question, Mr. Lanier.

A. It was our money.

Q. Where did you get the money?

A. It was furnished by J. F. Hooper; it was borrowed by Dallas and Lanier.

Q. How long prior to the sale was it borrowed?

A. A day or two.

Q. How many days?

A. Don't remember.

Q. Did Cooper bring it to West Point and deliver it to you?

A. We came together here.

Q. Did he come to West Point and deliver it to you?

A. No, sir.

Q. He brought it here then?

A. He brought it by West Point and we came together from West Point here.

Q. How long was it before the sale that you made an arrangement with Hooper that he was to advance the money?

A. A day or two.

Q. Where did he live.

A. He lives at Newsite, Alabama.

Q. How far is that from West Point?

A. I don't know; 30 or 35 miles, I guess.

Q. Is it on a railroad?

A. No, sir.

Q. Is there a telegraph line there?

A. I don't know whether there is or not.

Q. How did he first know of your desire to borrow the money?

A. It was so expressed by Mr. Dallas and myself to him.

Q. Where was he?

A. At West Point.

Q. Was he there at your request?

A. I don't remember. He was there in the interest of himself, I suppose; he owned $1,500 of the bonds. I don't know whether he was there at my request or not.

Q. You say Hooper owned $1,500 of the bonds?

A. Yes, sir.

Q. So you had made all of your arrangements to pay the $10,000 required by the order of Court before you had any conversation with Col. Hammond on the subject?

A. Conditional that we bought.

Q. But you had made your arrangements to pay in the money before you had any conversation with Col. Hammond?

A. Yes, sir, conditional arrangements. We made no arrangements that were binding on us in the case it was not bought.

Q. You had made that arrangement for the money to be paid in under the decree, in case you bought?

A. Yes, sir.

Q. Before you had any conversation with Col. Hammond at all?

A. Yes, sir.

Q. Do you mean to swear here that but for the assurance of Col. Hammond that the title was good, the bondholders would not have bought it at all?

A. I say the circumstances of the decree and the proceedings and his assurance, is what caused us to bid.

Q. And you mean to say that but for the assurance of Col. Hammond you and the balance of the bondholders would not have bought it at the sale at all?

A. I think it would have influenced us.

Q. Were there any other arrangements on the part of anybody else to have bid, that you know of, before that time?

A. No, sir.

Q. So far as you know the bondholders were the only persons who intended to purchase?

A. So far as I know,—yes sir.

Q. You had formed a committee to buy before the sale took place hadn't you?

A. No, sir.

Q. You had not?

A. No, sir; we had no committee.

Q. Didn't you buy for the bondholders?

A. Yes, sir.

Q. Did you buy as a committee for the bondholders?

A. Not as a committee. Dallas and myself expected to try to protect the bondholders at the sale, as much as we could.

Q. Hadn't the bondholders conferred some days prior to this sale and determined to buy the property, and instructed you and Mr. Dallas to buy it for them?

A. I don't remember any conference.

Q. Wasn't there some communication between yourself and the bondholders to that end?

A. There may have been an expression by each one of the bondholders.

Q. How was it expressed? By what mode—orally or in writing?

A. Orally.

Q. Where were you when these expressions were made?

A. At different places. I don't know; wherever we may have met any of the bondholders.

Q. You went around to see the bondholders, did you?

A. Yes, sir; they came to see us, I guess.

Q. Are you "guessing" in all you have sworn to before in this case?

A. No, sir, I am not swearing to that at all.

Q. You know perfectly well, Mr. Lanier, whether before this sale was had there was an arrangement among the bondholders that the property should be bought in their name; now please answer whether or not there was?

A. I say if there was it was not by any meeting or conference.

Q. I will put the question again. Was there not an arrangement, prior to this sale, and prior to your conversation

with Col. Hamomnd, by which it was understood and agreed that Dallas and yourself should become purchasers for the bondholders, of this property?

A. Not with all of them.

Q. Which of them were omitted from the arrangement?

A. That I can not remember.

Q. With how many of them?

A. Most of them.

Q. You say most of them were parties to the arrangement?

A. Most of them had a conference, I think.

Q. Isn't it a fact that you and Dallas represented them all except the bonds held by Jannopoulo and the bonds of Mrs. Sallie H. Huguley?

A. It is probable that we considered ourselves their representatives, or expected them to co-operate in what we might have done.

Q. It is probable you considered yourselves so,—that is not answering the question, is it?

A. Well, we expected that they would agree to what we did.

Q. I have not asked you what you expected. I asked you if there wasn't an arrangement between yourselves and the bondholders that you and Dallas should buy it in for them—all except as to the bonds held by Mrs. Sallie H. Huguley and by Jannopoulo?

A. It was, perhaps, unless a very few of the smaller bondholders.

Q. What other bondholders were there, besides these, who were not parties to the agreement?

A. I don't remember what bonds there were; it was a very small amount that was not represented. I think there was some expression by which we considered ourselves the representatives, perhaps, of all except those two.

Q. Except Jannopoulo and Mrs. Huguley?

A. Yes, sir.

Q. Well, what was the limit of your authority as to bidding at the sale, given you by the bondholders?

A. None given.

Q. You had unlimited authority, then?

A. No limit was given.

Q. Weren't you authorized to bid the amount of the bonds?

A. No, sir.

Q. Mr. Lanier, you say that that property was not worth more than you bid for it on the day of the sale; do I understand you to say that?

A. I say that was a fair price for it.

Q. Were you present at Hamilton, Georgia, when a sale of same property, under prior decree in the case of W. H. Huguley & Co. against Alabama & Georgia Company was had?

A. Yes, sir.

Q. How long was that before this last sale?

A. I think that sale was in January, 1890—the sale under the Huguley decree.

Q. What did the property sell for there?

A. I don't know. About $68,000.00, I think.

Q. That sale was subject to the first mortgage bonds, was it not?

A. Yes, sir.

Q. Subject to these same bonds that were foreclosed under the latter suit?

A. Yes, sir.

Q. And it brought about $68,000.00 over and above the first mortgage bonds; the buyer at that sale bid under the decree in his favor, but I will ask you whether or not there was another bid of nearly the amount that was actually bid for it?

A. Yes, sir; I think the property started considerably below that and bid up to that point.

Q. Weren't you interested in the bidding at that sale?

A. I was very near a man who was bidding on it.

Q. Didn't you have a business interest in connection with it?

A. Nothing of a serious nature at all, not after I learned that the whole property was to be paid for in debts.

Q. Isn't it a fact that there was a bid at that sale in money, a cash bid?

A. I don't know of any.

Q. Isn't it a fact that some Boston parties bid within $500 of the sum it was actually knocked off at?

A. It is not, to my knowledge.

Q. You say you know it was not?

A. I know it was not. To my knowledge it was not.

Q. Do you mean by that to say that you don't know, or that you know it was not a fact?

A. I say if it was the fact I know nothing of it.

Q. Didn't you, at that sale, authorize B. T. Smith and C. C. Jones to bid for and on account of the Boston parties?

A. Not a bit of it, sir.

Q. Or of yourself?

A. Not a particle.

Q. Did you make any bid yourself?

A. I don't remember. It is possible I may have made a bid on it, but I really do not remember. I couldn't answer you positively.

Q. Well, now coming back to the arrangement between yourselves and the bondholders, prior to the purchase of this property under the foreclosure in this case; you had counsel advising you at the time of your purchase, Dallas and yourself, did you not?

A. No special attorneys in the case.

Q. Well, didn't you have counsel advising you with reference to the sale?

A. We consulted attorneys in the case.

Q. Your attorneys?

A. Yes, sir.

Q. Was there any arrangement between yourself and Dallas and these bondholders that you represented in the purchase, prior to the sale, prior to your conversation with Col. Hammond, that you should only bid in the event that Col. Hammond waived all rights—further rights to the property?

A. There was not.

Q. Was there any arrangement between you and the bondholders, made with reference to this property?

A. No, sir.

Q. So there was no understanding or agreement that your bid, whether you bid it or not, should be dependent upon the fact as to whether or not the attorneys on the other side advised you that they did not propose to take an appeal?

A. That was left discretionary with me.

Q. When you bought in the property you did so in the exercise of the discretion the bondholders had given you?

A. In the exercise of my own discretion; Dallas and myself.

Q. But that was the discretion the bondholders gave you and Dallas and Kirby?

A. Yes, sir.

Q. So you bought in the exercise of the discretion the bondholders had given you three?

A. Our discretion.

Q. Of course it was in your discretion, but that was the discretion the bondholders had given you the right to exercise?

A. I didn't know whether that would meet their approval or not.

Q. They didn't limit you right, by their instructions?

A. No, sir.

Q. You state in your answer to the petition in this case,

as follows: "It is true that one of the purchasers, to-wit: L. Lanier, joined in the organization of a new corporation known as The Galeton Cotton Mills, but the other two, to-wit: said Kirby and Dallas, did not so join in the organization of said company." Is that a fact. Are those statements true?

A. They were among the corporators of that company—The Galeton Cotton Mills.

Q. I will just ask you, Mr. Lanier, please to state if that statement which I have read to you from your answer is true or is it not true?

A. That is not true.

Q. So that statement in your answer is not true?

A. That statement is not true. Those parties were parties to the incorporation of The Galeton Cotton Mills. I told you I hadn't read this document carefully. I have heard of it, but that statement is a perversion, as I understand it. Kirby and Dallas were parties to the organization of The Galeton Cotton Mills.

Q. Now, on the organization of The Galeton Cotton Mills, I will ask you if L. Lanier, or W. C. & L. Lanier, didn't take all of the stock?

A. They did not.

Q. Except one thousand dollars?

A. No, sir.

Q. $500 to Dallas and $500 to L. J. Blackman?

A. They did not.

Q. Have you stock books?

A. Yes, sir.

Q. Will you produce the stock books of the corporation?

A. Yes, I can do it.

Q. Does it show truly to whom the first stock was issued?

A. Yes, it does.

Q. Was there any agreement in writing between the bondholders and yourselves, or other parties, in respect to the stock of the company?

A. The stock of the company——

Q. Well, I will ask you this first; was there any agreement in writing as to the stock of the company, how it should be issued and how held?

A. None at all. The stock was issued to each one of these incorporators to the extent of his claim.

Q. There was no money paid in on the stock?

A. No, sir; the stock was issued to the bondholders.

Q. So that when you reorganized you issued to each bondholder the stock of the corporation to the amount of the bonds he held?

A. Yes, sir.

Q. What was the capital stock of the corporation?

A. $65,000.00.

Q. The same as the bonds?

A. Yes, sir.

Q. You have stated already that the bonds were issued as a substitute for the bonds taken up in this purchase?

A. Yes, sir.

Q. The bonds issued were $65,000.00?

A. Yes, sir.

Q. A new issue of bonds by the Galeton Company?

A. Yes, sir.

Q. Then you issued to each bondholder an amount of stock equal to the amount of bonds he held?

A. Stock was issued to each of them prior to the issue of the bonds.

Q. Prior to issuing bonds you issued the stock?

A. For the purpose of organizing the company.

Q. When you issued the bonds they delivered up the stock, or did you hold the stock?

A. The stock was transferred to the purchasers of that property.

Q. What purchasers?

A. The new purchasers.

Q. Well, to whom?

A. Well, there are a great many of us.

Q. Do you mean to the corporation?

A. No, sir; to the purchasers of that property from the Galeton Cotton Mills.

Q. Transferred by the Galeton Cotton Mills?

A. No, sir; by the stockholders of the new purchasers of the property.

Q. Who were the new purchasers of the property?

A. There were a great many of us.

Q. Give me the names of every one, with his interest?

A. I will do no such thing; I can't do it.

Q. There are so many of them, or have you forgotten?

A. There are a great many of us.

Q. Well, how many?

A. There are, I suppose, seventy or eighty; I don't know the number.

Q. Do your books show the number of shares transferred to each one of these purchasers, as you call them?

A. The whole stock was transferred to the West Point Manufacturing Company in consideration of their advancing this money.

Q. Advancing who this money?

A. Money to pay the costs in the case.

Q. The $10,000.00?

A. Yes.

Q. The West Point Manufacturing Company then paid the costs?

A. That stock goes to the individual stockholders unless

Q. Was the stock transferred to the West Point Company then?

A. Yes, sir.

Q. Now, are not the individuals composing the directory

of the West Point Manufacturing Company the same as those composing the directory of the Galeton Cotton Mills?

A. Yes, sir.

Q. It is all run under one management?

A. Yes, sir; the same president and the same secretary and treasurer.

Q. So you issued stock to the amount of $65,000.00 and bonds to the amount of $65,000.00 on this property?

A. Yes, sir.

Q. How long after your purchase?

A. Immediately afterwards.

Q. I believe you stated that there was no cash paid in on the stock?

A. The cash was in payment of the costs—$10,000.

Q. That you say was a loan?

A. That was.

Q. I will ask you whether there was any cash paid in by stockholders, for the stock?

A. Except as to the amount; that's all paid in.

Q. The $10,000.00 that you say you borrowed, do you consider that as part of the capital stock? Who paid it, and on whose stock was it paid?

A. That was paid by the West Point Manufacturing Company.

Q. When?

A. Immediately after the sale, when they bought the property.

Q. When they bought the stock from the bondholders to whom it had been transferred?

A. In about thirty different places.

Q. When the West Point Mills bought that stock from the bondholders to whom it was originally issued, they paid, or secured to be paid, the $10,000 to Hooper; is that it?

A. Well, there were other amounts paid besides that; $10,000 didn't cover the cash that was paid.

Q. $10,000 didn't cover the cash that was paid into court?

A. It was not quite all of it; some more over that.

Q. How much more?

A. I don't remember now.

Q. As much as a thousand dollars?

A. I should think there was that.

Q. Can you give me the items?

A. No, sir.

Q. What you paid was paid into court, wasn't it?

A. No, sir; $10,000 was paid into court. Yes, sir; whatever was paid was paid into court.

Q. These bondholders, when they held stock, and when it was issued to them, they paid no money on the stock, did they?

A. No, sir.

Q. What is your individual interest in this matter?

A. It is whatever my interest may be in the stock of West Point Manufacturing Company.

Q. What is your interest in the stock of the West Point Manufacturing Company?

A. You mean the shares? The amount of my stock in the West Point Manufacturing Company?

Q. Your interest in the stock?

A. How many shares I own? Is that your question?

Q. Yes.

A. I own 1467 shares.

Q. What is the capital stock of that company?

A. Four hundred thousand dollars.

Q. Does that include the stock that has been transferred by the Galeton Cotton Mills to it?

A. No, sir.

Q. Do you include in your fourteen hundred shares the stock of the Galeton Cotton Mills?

A. No, sir.

Q. You say your proportion was fourteen hundred shares?

A. You asked me what my shares in the West Point Manufacturing Company was and I said 1467 shares.

Q. And you say that your interest in the Galeton Cotton Mills is in proportion to your interest in the West Point Mills?

A. Yes, sir.

Q. What is the par value of the shares of the West Point Mills?

A. $100.00.

Q. So you own 1467?

A. $146,700 out of $400,000.00.

(By Mr. Abbott.) Mr. Lanier, I want to ask you whether or not you reported the conversation you had with Col. Hammond and Mr. Orrick to Mr. Dallas?

A. I did.

Q. Before he agreed to go into the purchase?

A. Yes, sir.

Q. Was that before the sale, before the bidding was done?

A. Yes, sir; before the sale.

Q. And Mr. Orrick also?

A. I didn't have any conversation with Mr. Orrick about it prior to the sale.

Q. What reasons, if any, did you give Dallas why he should join in with you?

A. Well, the assurance of Col. Hammond was satisfactory, authorizing us to continue bidding.

Q. If you had any difficulty in fixing the limit to which you would go in this bidding, with Dallas, state what it was?

A. Mr. Dallas seemed to be willing to bid to the extent of $65,000 on the property.

Q. (By Judge Chilton.) What was the date of your first conversation with Col. Hammond?

A. In regard to this property?

Q. Yes.

A. It was the day of the sale.

Q. Where was it?

A. Near the court house here, in this city.

Q. Where the property was being sold?

A. Yes, sir.

Q. While it was being sold?

A. Well, it was prior to the sale, immediately before the sale.

Q. Did you have one or more conversations with him before you bid in the property?

A. I had one conversation before it began to sell.

Q. Just one before you bid it in?

A. No; I had a conversation then before it was knocked down; perhaps two.

Q. All at the same time, and at the same place?

A. The time the crying was going on. Yes, sir.

Q. You say you had two conversations during the crying of the property?

A. Only one conversation before I made a bid.

Q. What was your bid?

A. $66,000.00 raising his $1,000.00.

Q. And you had had but one conversation with him prior to that?

A. Prior to that bid.

Q. State exactly what occurred in that conversation; state his language and your language and who began first?

A. Col. Hammond approached Col. Abbott and myself and suggested to Col. Abbott that they buy this cotton factory.

Q. Who do you mean by they?

A. Col. Hammond and Mr. Abbott.

Q. Was that laughingly done or seriously done?

A. Well, he was not laughing.

Q. Well, did he appear to be serious in that proposition, or was it simply jokingly done?

A. I don't know.

Q. You couldn't tell from his manner whether he was serious or not?

A. No, sir, I couldn't tell whether he was serious or not.

Q. Well, just state what he said, as near as you can recall the language?

A. I said that he remarked to Col. Abbott, or suggested, that we buy this cotton factory, or buy another factory; one or the other; I don't remember which. Then an allusion was made, either by myself or Col. Abbott (I think it was myself) we spoke of this notice I had heard of.

Q. The notice by Huguley had been given before that time, hadn't it?

A. No, sir; he had not.

Q. This was prior to the bidding?

A. Prior to the offer of the property.

Q. The notice had been given prior to the bidding hadn't it?

A. At the time of the announcement of the sale the notice was read, but that was sometime after this conversation with Col. Hammond, Col. Abbott and myself.

Q. You say he suggested that he and Col. Abbott buy the mill?

A. Yes, sir; I asked him in regard to this notice that I had been told would be read by Huguley or his attorney.

Q. How had you been informed about that before that time?

A. Some one had told me; I think perhaps Mr. Dallas; how he got it I don't know.

Q. Mr. Dallas knew Huguley was going to forbid the sale?

A. Had a notice that he expected to read, I didn't know of the notice until I talked with Col. Hammond, and Col.

Hammond stated that he had just read a notice and had torn his name from the head of the sheet that it was typewritten on, and I asked him if it would affect the sale or affect the titles to the property, and he said not in the least, or words to that effect.

Q. I will ask you if you recollect the words he used?

A. That is my recollection, that it would not affect the titles in the least; something that was assuring to me.

Q. What did you say then, in his presence?

A. He just spoke of his efforts to see that the property brought as much as possible.

Q. Well, just tell what he said?

A. He said that he was doing what he could, and working his best, to make this property bring as much as it would.

Q. Did he tell you who he was working for?

A. No, sir; I don't know anything about who he was working for. I supposed.

Q. I am not asking you what you supposed?

A. I had no reason to suppose he was working for anybody but Huguley.

Q. Did you know who he was working for?

A. No, sir; I didn't know at the time.

Q. Well, what else occurred in that conversation, any time prior to the sale there?

A. Well, I started to tell what he said; that is, that he was doing what he could to make the property bring as much as he could, and that Huguley's effort was in the other direction. I asked him what effect it would have, and he said none whatever upon the titles of the property.

Q. Anything else?

A. No, sir.

Q. So that was all that occurred prior to the sale between you and Col. Hammond?

A. No, sir; we talked afterwards.

Q. I am speaking of prior to the sale?

A. We talked before he knocked it down.

Q. What was the next conversation before the sale?

A. I asked this question, if he was still satisfied the titles were good and he again assured me they were.

Q. You say he again assured you; what did he say?

A. I don't remember his words exactly.

Q. Is that all you had before the sale, before it was knocked down, with him?

A. I don't know; I believe that is all I recollect of it.

Q. When was your next conversation with Col. Hammond?

A. I talked with him as we came off from the Court House, after the property had been knocked down to me.

Q. State what occurred; what the conversation was and who started it and just exactly the language used as near as you can recollect it?

A. Well, that was the time that Mr. Orrick spoke to me in regard to the insurance.

Q. I am speaking of your conversation with Hammond?

A. I don't remember now what the conversation was with Hammond. He probably said something but I don't remember what it was.

Q. Do you remember anything that Col. Hammond said after the sale?

A. Well, not at that time.

Q. Well, at any other time after the sale?

A. I don't know. He went into the confirmation of it; he went in with us to the court house at the time it was confirmed.

Q. He didn't say anything then, did he?

A. Only co-operated in the confirmation.

Q. Did he say anything?

A. No; he only went in at the judgment or settlement.

Q. Did he say anything?

A. Yes, sir; he expressed himself as satisfied.

Q. What did he say?

A. He said that he was satisfied to accept the money for some of the bonds that he held.

Q. Did he tell the Court that?

A. No, sir; he told Col. Buck, the commissioner who sold the property.

Q. That he was satisfied?

A. Yes, sir. And was willing to accept the pro rata that was due the party whose bonds he held. He held six thousand dollars of the bonds.

Q. Was that Mrs. Sallie Huguley's and Jannopoulo's?

A. That wasn't Jannopoulo's.

Q. He only said he was satisfied and ready to accept his pro rata on the bonds of Mrs. Sallie Huguley, that he held?

A. Yes, sir.

Q. He held those bonds for collection, didn't he?

A. Yes, sir.

Q. When was that conversation? You say it was at the time of the confirmation?

A. Yes, sir.

Q. Any other conversation now? Give the time, place and exactly what was said?

A. Well, I don't remember any other.

Q. Where was Mr. Kirby that day?

A. I really don't know; I don't remember.

Q. Was he here?

A. I have been under the impression he was, but I can not remember.

Q. You don't remember whether he was here or not?

A. No, sir. It was my recollection that he was here, but I am not certain.

Q. Is it your recollection that you conferred with him here before you bought it, that day—bought the property?

A. If he was here I did.

Q. But do you remember whether you conferred with him or not?

A. I say I don't remember whether he was here or not.

Q. Then you do not remember conferring with him, do you?

A. I do not.

Q. Was Mr. Kirby solvent or insolvent at the time?

A. I suppose he was solvent.

Q. Wasn't he a man of means?

A. Yes, sir.

Q. Large means?

A. Well, I don't know as I know about his means.

Q. A man of good commercial standing?

A. So far as I know he was.

Q. Wasn't he so regarded? He banked at the time at West Point?

A. Yes, sir.

Q. Where did he live?

A. In Newnan.

Q. Did you know him before that time?

A. Yes, sir.

Q. Had you formed any estimate as to his solvency?

A. Well, I suppose he was a solvent man.

Q. Well now, Mr. Lanier, wasn't Mr. A. T. Dallas one of the trustees in the bonds, in the mortgage secured by the Galeton Company?

A. Yes, sir.

Q. The same Dallas who is one of the respondents to this motion?

A. It is my recollection that he was a trustee in that deed.

Q. And the same Dallas who is a respondent to this petition?

A. Yes, sir; the same Dallas.

Q. Who was the other trustee?

A. I think I am one, and I don't know whether Kirby is one or not.

Q. (By Col. Abbott.) This conversation which you had with Orrick occurred before the confirmation, didn't it—the confirmation of the sale?

A. Oh yes; immediately after the sale.

Q. I will ask you what information you had from your counsel or either of them, as to the dismissal of the appeal or as to the appeal not being prosecuted, and as to the desire of the defendants that the property should be sold without any embarrassments?

A. I had information from both of them.

Q. State who from and what it was?

A. I was either told or written by both of you that it was; that the time had lapsed and that there would be no appeal; it was withdrawn or something; it had been abandoned.

Q. What information, if any, did you have, and from whom did you get it, as to the date of the sale being fixed away ahead; a long date fixed?

A. I think you told me about it, and Col. Brewster.

Q. What was told you?

A. That the sale was to be in September, and I think that must have been in May or June or July; it was ninety days off.

Q. What reason did brother Brewster or myself give you for that?

A. That there was no further recourse on the part of the defendants; that they had abandoned it, or the time had elapsed for an appeal; any way, that there would be no appeal; I was notified that there would be none.

Q. What reason, if any, did brother Brewster or myself give you why three months was fixed originally for the sale? What information did we give you about what Col. Hammond said about fixing a date way ahead?

A. Well, the reason given was by one of you, that it was giving ample time for the sale of the property.

Q. Was there anything said about having time to determine the question as to whether he would continue the appeal or not?

A. Yes, sir; that was mentioned, too.

Q. What was said about that?

A. I don't know whether that conversation was with you or Col. Brewster, but one or the other, and that time was given so that if any appeal would be made it would give them ample time to make it in.

Q. What information did you get from Brewster or myself as to Hammond's decision in the matter?

A. After the sale?

Q. No, sir; before the sale; about the appeal?

A. That there would be no appeal at all; you were positive, assured by Col. Hammond there would be no appeal.

Q. Did that influence you at all in your action—this information you received from Brewster and myself,—in addition to what Col. Hammond said?

A. You assured me the property would be sold, and I had confidence in the legality of it, and yourselves, and being assured by Col. Hammond that the titles would be good, I felt doubly assured and authorized to go ahead and do what I did.

Q. Do you want to make any explanation about your answer?

A. Yes, sir.

Q. Well, make it?

A. This answer here avers that Dallas and Kirby were not parties to the organization of The Galeton Company. I state that they were, and this averment here as to that part of it, if read by me at all, was entirely uncomprehended; I didn't comprehend it or would not have gone in there. They were parties to the organization. I will state further that it

is possible they were not parties to the incorporation of The Galeton Cotton Mills, but they are parties to the organization. I say they may not be; I don't know; I am not certain as to that. The books themselves produced would show who were the incorporators.

Q. This answer was drafted by your counsel?

A. Yes, sir.

Q. Upon information that you gave them?

A. Yes, sir; but if this part here had been noticed it would not have gone in.

Q. In point of fact, didn't Col. Brewster and myself furnish much of the information that went into this answer?

A. Yes, sir.

Q. (By Judge Chilton.) What dividend or per cent was paid to Mrs. Sallie Huguley on her bonds?

Col. Abbott: The record shows that.

A. Something over 80 per cent principal and interest.

Q. Wasn't the dividend that was to be paid based on, first, the repayment of the $10,000.00 you had paid in? Wasn't the $10,000.00 paid in taxed to her pro rata, on the bonds?

A. No, sir; it was not.

Q. Was that you paid her as if you had not paid in any money at all? As if there were no charge against her bonds? You paid her, in other words, her pro rata of the full amount of the bid, irrespective of the fact that you had furnished the $10,000.00?

A. The $10,000.00 had nothing to do with the settlement with her; her bonds, with the interest due on them, were paid in full, less the court costs and the expenses of the case.

Q. I will ask you to state if you didn't say to Mrs. Sallie Huguley, to Elliott and to Kirby, as an inducement to them to go into the reorganization, that there was no insurance

upon the property, and they might lose their bonds if the property was destroyed by fire?

A. I have never had any conversation with Mrs. Sallie Huguley. Perhaps to the others I may have said something.

Q. Didn't you state, in a conference of the bondholders, it would be better for these other parties to come in because there was no insurance?

A. There was insurance upon it the day it was bought, and I could not have made it before that.

Q. In what company did you insure the property?

A. I don't know; a good many companies. It was a good large amount.

Q. With what agents?

A. W. C. & L. Lanier were the agents of those companies.

Q. Have you any books showing these companies?

A. Yes, sir.

Q. Before the purchase, in conference with the bondholders, didn't you state, as a reason why they should combine, that there was no insurance upon the property?

A. I did not.

Q. Did you state anything like that?

A. No, sir.

Q. What was the amount of insurance you took on the property?

A. I don't remember.

Q. Can't you approximate it?

A. I think about $75,000.00.

Q. How much was on the property at the time you bought it?

A. There is no telling. I don't know. I suppose about $200,000.

Q. Don't you know for what amount that property had been insured, the main building and this machinery, for several years?

A. I don't know. They could have insured it to that extent if they had wanted to.

Q. You were once the manager of the Alabama & Georgia Manufacturing Company?

A. Yes, sir; up to 1880.

Q. How much was it insured for during that period?

A. I do not remember.

Q. Have you no recollections?

A. No, sir. About $150,000.00 I suppose.

Q. How long had Mr. Jannopoulo been president of the Huguley Manufacturing Company, and in charge of that company, before you purchased at this sale?

A. Well, I presume at the sale in January, 1890, I don't know when he was made president.

Q. Shortly after that?

A. I suppose so.

Q. Between 1890, when he became president, and the time you purchased, hadn't he made large improvements upon the machinery of the mill?

A. Nothing except repairs.

Q. Didn't he add anything to it?

A. No, sir, no new machinery.

Q. Do you know the extent of the repairs he had made?

A. Yes, sir; there is some evidence about it. I forget the amount.

Q. Were you familiar with the physical condition of the mill during his administration?

A. No, sir; not particularly.

Q. As a matter of fact, you didn't go into the mill during his administration, did you?

A. I don't remember being in there.

Q. (By Col. Abbott.) If there is anything omitted with respect to the conversation with Orrick, state what it is, where it occurred and when.

A. After we had gotten to the hotel I asked him why

Mr. Jannopoulo, whom I supposed had owned the six mortgage bonds, was not trying to protect them at this sale; he stated that the business had not only been unprofitable to him, but had been very unsatisfactory, and he would rather lose it than have anything further to do with it.

Q. (By Judge Chilton.) When you say your counsel advised you that the first appeal had been abandoned, weren't you informed that an effort had been made to make the bonds the supersedeas bond required by the Court, and it was abandoned because they could not get it? Hadn't you had information of that sort?

A. I didn't know the reason why it had been abandoned.

Q. You knew they had tried to make the bond and failed, did you not?

A. No, sir.

Q. Weren't you informed of that?

A. I don't remember being informed of it.

Q. You don't remember whether you were or not?

A. I don't remember being informed about that fact.

Q. Do you remember anybody telling you they tried to make the bond and couldn't?

A. No, sir. Perhaps I may have heard speculation about it, but no information by anybody.

Q. (By Col. Abbott.) In point of fact, wasn't Jannopoulo and the Huguley Manufacturing Company able to give bond?

A. I considered them eminently able from what I heard. The president of the company was known to be a rich man, and a man of means, and I suppose he could have made bond for a good deal more than that. He assured me he had the credit to raise $200,000 at the banks in St. Louis, at any time he wanted it.

Q. Was that or not the cause of its being abandoned, so far as you know, that the Huguley Company couldn't give bond?

A. I don't know.

Q. What was your information about it, the cause of abandoning this appeal?

A. The speculation was they couldn't give the bond.

Q. Who couldn't?

A. The Huguley Company, or the defendants in this case.

B. F. Abbott being next duly sworn, deposed as follows:

Direct Examination by Mr. Brewster.

Q. Just state the facts of this case, as you know them, without being interrogated?

A. The final decree was prepared by myself and Mr. Brewster, of his firm, and it was submitted to Col. Hammond and some suggestions and alterations, perhaps, were made in it by Col. Hammond; so that we both agreed that the decree was the result of the opinion and decision of Judge Newman filed in the cause, and that far it was the joint work of plaintiff's counsel and defendant's counsel. When the decree was signed Col. Hammond gave notice of the intention to appeal. N. J. & T. A. Hammond and Mr. John C. Orrick, of St. Louis, appeared of record as counsel for the defendants, except that they did not appear for W. T. Huguley. He had no counsel in the cause, so far as I knew; certainly none who appeared and took active part in the litigation. When the court was asked to fix a date for the sale of the property Mr. Hammond stated, in open court, that if there was to be an appeal he wanted plenty of time in which to prepare the appeal, and if a sale would be had without an appeal he desired the time fixed far enough off so that the public could be fully advised of the fact, so that the property could sell without embarrassment. The court fixed, on that suggestion, the first Tuesday in September, 1892. My office was on the same floor, in the same building, with Col. Hammond, during all this time; and in passing I would frequently enquire of him whether he intended to prosecute the

appeal. I remember to have asked him a short time, say, as I now remember it, about two weeks before the sale, whether he intended to prosecute it, and he told me that he did not think that he would. I do not remember the date, or how long it was before the day of sale, but I am quite sure that Col. Hammond told me, before the day of sale arrived, that the parties he represented would not prosecute the appeal. He appeared as counsel for the Alabama & Georgia Manufacturing Company, the Huguley Manufacturing Company, and also as counsel for the St. Louis Loan &Trust Company, the St. Louis Trust Company, which had a mortgage upon the Huguley Manufacturing Company property, this same property, and of course was subject to this mortgage then being foreclosed. The evening before the sale I went to the Kimball House and saw Mr. Orrick. He was complaining of the decree, and said, among other things, that "it beat the record of such cases," and he ought to have gained it, and he had come down to see what was going to be done with the property. I didn't ask him whether he expected to be a bidder on the property or what further steps he expected to take. On the morning, before the sale, standing on the pavement in front of the court house door, I heard Col. Hammond say, in a conversation with Mr. Lanier, (but it was perhaps directed to both of us, because we three were talking) that Mr. Huguley was there and was proposing to give some sort of a notice that the purchaser of the property would take it subject to the rights of him, Huguley, or words to that effect. Mr. Hammond was complaining at the conduct of Mr. Huguley in that Mr. Huguley had prepared a notice written upon one of Col. Hammond's letter-heads. Mr. Hammond said that he took notice from Huguley and tore his advertisement off of the sheet, and told Huguley that would make Mr. Hammond in a false light. "for," said he, "here I am giving my assent to this sale and trying to make the property bring all it is worth, and you (Mr. Hugu-

ley) are going around here with a notice written on my stationary to the effect that the purchaser will take it subject to somebody else's rights." Mr. Hammond made the first bid on the property, and Mr. Lanier made the second and last bid. I also remember hearing some conversation between him and Mr. Lanier about Hammond and Lanier going in together and buying the property, either for themselves or persons that they represented, but I don't remember the exact purport of it. Before the sale, I had a conversation with Mr. Hammond about having an auditor appointed to take an account of the outstanding bonds and ascertain the amount due thereon for principal and interest, and Mr. Hammond said: "We can ascertain among ourselves who the holders of the bonds are, the amount of each and the amount due on each, for," said he, "it is all in Lanier's evidence, and in Orrick's and in Jannopoulo's, who the holders of the bonds are, and we will save the expense of having an auditor or master to take an account of the bonds." Mr. Buck was appointed master to take an account of the bonds, and to make the sale, make the title and do all else necessary to winding the matter up, for a certain compensation, which we agreed upon, and which we considered reasonable.

Q. You say it was agreed on?

A. We agreed on it in open court—what he was to have.

Q. Who did?

A. Hammond and myself; Mr. Hammond and I agreed upon it.

Q. (By Judge Chilton.) Is that agreement shown by the records?

A. Yes; I think the receipt shows what he got, I think he got $400.00 as master, to make the sale, audit the bonds, pay out the money and make the titles.

This conversation about saving the expense of a master or auditor all occurred before we agreed with Col. Buck. Mr. Lanier made a calculation as to about what was due upon

the bonds. That calculation was handed over to Buck and was shown to Col. Hammond, and I saw Col. Hammond examine it; and Col. Hammond still objected, stating, of course, that if any error should be found in the calculation he would reserve the right to move to correct it, and we told him, of course that right was reserved. The notice for confirmation was served upon Col. Hammond and he acknowledged service for defendants, and was, I believe, in court when the order of confirmation was passed. I reported to Mr. Lanier who was the buyer of this property, the substance of the conversations I had with Col. Hammond. Mr. Lanier asked me if the litigation was over and I told him that the appeal was abandoned, or all further contest was abandoned, as I understood it from these conversations with Col. Hammond. The bid of Mr. Lanier for the property was considered as cash, and when the expenses of counsel fees, the master's fees, the court costs, etc., were deducted, Mrs. Huguley got her proper proportion of the fund in court on her bonds, without any further draw-back; something over eighty cents in the dollar, I think. The St. Louis Trust Company had foreclosed this mortgage in this same bill, and when I saw Col. Orrick here I supposed he was here for the purpose of making the property bring enough, at least, to pay the St. Louis Trust Company, something at least, on its debts, and I was surprised when he failed to be a bidder at the sale and they abandoned it. I heard Col. Orrick tell Mr. Lanier that he would cancel the insurance on the property; at least it is my recollection that I heard that statement, coming away from the court house. And that is about all I know about it.

Q. (By Mr. Brewster.) Well, Mr. Abbott, as counsel representing the trustee in that litigation, was it not the purpose not to sell that property until all questions as to the litigation were disposed of?

A. Oh, yes, sir; and that was Col. Hammond's statement —the substance of Col. Hammond's statement, in the United

States Court; he wanted a day named far enough ahead so that the property could be thoroughly advertised and could sell without any embarrassments. In the meantime, of course, if an appeal should be taken the sale would not be had.

Q. How long after the decree was it before it was ordered sold?

A. My recollection is the decree was dated about the first of July; I am inclined to think the 3rd of July, 1892; and the date of the sale was fixed for the first Tuesday in September following. It might have been June. I know that Judge Newman had rendered a decision in writing, a long opinion, a considerable time before that, and we took sometime in which to prepare the decree. It took sometime for us to agree as to exactly what the decree should be, as to legal result of the decision; and in the meantime, (as Judge Chilton observes,) there was a motion filed by counsel for plaintiffs to tax as a part of the costs against the defendants; the trustee's counsel fees for conducting the litigation to a decree, and after a hearing on that Judge Newman decided adversely to that claim. And then we prepared a final decree for the sale of the property, which was nisi, as I remember it now, I believe for ninety days; at least the decree was; they had the right to pay the money in any time before the sale.

Q. Isn't it true that the purpose to sell had never been determined absolutely until we had ascertained that Hammond had abandoned that appeal, and didn't advertise, and use Hammond's information to you, before the day of sale, that their appeal had been abandoned and he wanted the property sold, and sold for all it would bring?

A. He informed me that the litigation was ended, and the fight had been abandoned. I don't know that he made the remark in conjunction with that that he wanted the property to bring all it would.

Q. Wasn't that information conveyed to the purchaser?

A. Oh, yes; I told Lanier and Dallas. Dallas was very timid and nervous about it, and didn't want to give as much as $65,000.00 for the property, and I told Dallas myself that he had Mr. Hammond's assurance that this thing was all over; of course, if the Alabama & Georgia factory ever had a good title that they would get that title.

Q. You assured Dallas of that?

A. Yes, sir; I told Dallas of that. I helped Lanier to get Dallas to go into the sale. Lanier seemed to be anxious to do what he could to protect the bondholders in the matter, and as I now remember, I think Kirby was a little disinclined to bid.

Q. And you communicated to them what Hammond had said?

A. Yes, sir; and, I will not be certain of that, the record will show better, the advertisement was to run from a certain date ahead, at which, as soon as the money was paid in, the advertisement should begin. I don't think the advertisement ran from the date of the decree up to the sale, but I think there was a day named ahead in which, if the money was not paid into the hands of the court, then the advertisement should start, and Buck was directed to advertise it in the Constitution and the Journal, for so long. I will not be accurate about those dates and figures, because I have not the record before me. That is my recollection, and the record will show.

I want to state that I prepared this answer myself, and I prepared it on information that I had and such information as I understood Mr. Lanier had gotten.

Q. What is your recollection of that notice that Mr. Huguley read?

A. My recollection is that just before the crying of the property began I noticed Mr. Frank Arnold moving about there pretty lively and finally, just as Col. Buck began the

sale, and before any bid was made, Mr. Arnold read the notice to the effect that the purchaser of that property would take it subject to the rights of W. T. Huguley and W. H. Huguley & Co. That is my recollection of the notice.

Q. What were their rights, as asserted there?

A. I didn't know and I don't know yet.

Q. Well, was that claim based on this litigation, from the notice?

A. It never said anything about this litigation. Mr. Huguley was a party to the litigation originally, and a decree *pro confesso* was taken against him, and he never appeared during the litigation, either in person or by counsel, and I didn't know whether the notice read by Mr. Arnold had reference to the rights growing out of this litigation or some other rights; it said the rights of W. T. Huguley and W. H. Huguley & Co.

Q. Were W. H. Huguley & Co. parties to this suit?

A. No, sir, not as I now remember. The record shows.

Q. And W. T. Huguley was only a party as one of the trustees?

A. He was made a party then on the allegation that he was interested adversely to the trust.

Q. He was one of the original trustees to the deed?

A. Yes, and was made a party defendant in order to square the record.

Q. How many bonds were present at the settlement of the sale the disbursement of the money?

A. Well, when we made the settlement, Col. Hammond was there—all the bonds were there except, I think, two or three; two bonds which they say Jannopoulo owned, or the Huguley Company or some party in St. Louis; and perhaps one other bond; but all were there except a thousand or fifteen hundred dollars, any how.

Cross Examination by Judge Chilton.

Q. You say Mr. W. T. Huguley was not represented?

A. No, sir; not by counsel. I frequently asked Col. Hammond to acknowledge service for him and he said no, that he didn't represent him, and I always got Mr. Huguley to acknowledge it himself.

Q. There was no representative of his present at the sale? Col. Hammond or Mr. Orrick didn't represent him?

A. Not so far as I know.

Q. They didn't state that they represented him?

A. No, sir.

Q. They didn't claim to represent him?

A. No, sir. Col. Hammond always claimed that he did not represent him.

Q. You say Mr. Huguley, for W. H. Huguley & Co. and himself, gave notice at the sale that whoever bought would buy subject to certain rights?

A. That is my recollection of the notice.

Q. And he gave that through an attorney who was present?

A. Yes, Mr. Arnold.

Q. Did you stop to inquire of Mr. Arnold the nature of this claim?

A. No, sir.

Q. Did you stop to inquire whether these rights related to this appeal or not?

A. No, sir. Col. Hammond and I talked about that, and Col. Hammond said that he didn't think Huguley had any rights in it. We just talked about it generally.

Q. He didn't claim in that conversation, to represent Mr. Huguley?

A. Not at all. We were talking about the effect of the giving of that notice on the morals of the sale; whether it would affect the sale.

Q. You spoke of a certain conversation between Col. Hammond and yourself prior to the sale, with reference to the abandonment of the appeal; did he ever tell you he had

abandoned all right of appeal to any of the parties to that suit?

A. He said there would be no appeal.

Q. Didn't he say that the parties had been trying to make a supersedeas bond the $10,000.00 required and couldn't get it?

A. He told me that Huguley had, but he told me that Jannopoulo wouldn't do it; he had abandoned it.

Q. That Jannopoulo personally?

A. No, sir; I mean the Huguley Company, as I understand it.

Q. Didn't he say that Jannopoulo personally would not become one of the bondsmen, but that Huguley & Co. were trying to make the bond and that Huguley was trying to make the bond?

A. I do not remember about that, Judge. I don't know that he did say that Jannopoulo would not do anything further about it.

Q. You represented the trustee, Robinson?

A. Yes, sir.

Q. At the time the appeal was taken on which this case was reversed by the Court of Appeals?

A. Yes, sir.

Q. You represented the men purchasing at the sale at that time?

A. Well, I can't say. I don't think I did. I never represented them only in the sense as bondholders, in buying the property and paying in their bonds and seeing to the distribution. After that event occurred I didn't represent Mr. Lanier. I never got his charter, and don't know who did. I represented one bondholder,—the Atlanta National Bank.

Q. Didn't you, as attorney for Robinson, trustee, resist the right of appeal?

A. I did. I acknowledged service for him. The record shows I acknowledged service.

Q. Didn't you resist it in an argument before the court?

A. Yes.

Q. I will ask you now, in that argument didn't you urge substantially the same reasons why the appeal should not be taken as you have stated in your testimony here to-day, with reference to the conversation with Hammond and his acquiescence in the report of sale, and the confirmation, as a reason why the appeal should not be taken; you argued it, didn't you?

A. Yes; I had some sort of an idea that a second appeal could not be taken, after the first one had been taken, been entered and abandoned, and very likely I did, in argument, urge some of these reasons at least why the Judge should refuse to grant the second appeal.

Q. You drew up the answer to this petition?

A. Yes, sir.

Q. Isn't it a fact that in the argument resisting the appeal you urged substantially the same reasons why it should not be granted as set up in this answer to the petition in this case; and wasn't Col. Hammond called on for a statement then, and made one, in the presence of the court, in which he said that he had not done anything whatever to deprive any client that he represented of the right to appeal?

A. I don't think Col. Hammond said that.

Q. Do you remember that he made a statement?

A. He made the statement that he didn't represent Huguley.

Q. And you don't remember his making the statement in open court that he had done nothing, that no act of his could be stated in which he had relinquished any right of appeal on the part of any client he represented?

A. Well, he made a statement, I think: but I do not think he made it as strong as you put it; but I don't remember. I had forgotten it until you mentioned it. He came up in court and he made some sort of a statement, but I

don't think he said he hadn't done any act or said anything to deprive any client he represented of the right of appeal; I do not.

Q. Well, in resisting that appeal, you did urge substantially the same grounds that are set up in this answer?

A. Well, I don't remember exactly what is in this answer.

Q. The statement made by Hammond that there would be no appeal, and by Orrick?

A. That Hammond said the first appeal had been abandoned; yes I guess I did.

Q. In Col. Hammond's statement to you did he ever tell you that he released or relinquished any right of appeal?

A. He never used those words.

Q. The first order required a supersedeas bond of $10,000.00?

A. Yes, sir.

Q. Don't you remember that there was an effort made to get the American Surety Company on that bond?

A. I heard that Mr. Huguley tried to get it.

Q. Did you ever confer with Col. Hammond as to whether the decree would be taken?

A. Yes, sir; not confer with him. I had a little colloquy with him in court about it.

Q. Well, that Company was offered as a security on the supersedeas bond?

A. Yes, sir.

Q. And you objected to it being received?

A. Yes; I stated to the court that it could not go on the bond.

Q. That is a New York corporation?

A. Yes. And the court said he recognized that.

Q. Was there any statue in Georgia authorizing it to become surety on bonds in State courts?

A. I don't know. Some of those companies can.

Q. There was a proposition to offer this company and you objected to it becoming surety?

A. Yes, sir. I don't think there was any offer or tender of that company as security, but there was a proposition to offer it.

Q. And that was presented to the court?

A. Yes, but I don't think the Company had agreed to go on the bond. At least, that was not the statement there.

Q. The proposition was whether it would be acceptable?

A. Yes, whether or not it would be acceptable; we were investigating to see if it would be acceptable security.

Q. And you urged adversely to that?

A. I didn't make an argument. I told the court I didn't think that company could be accepted any way.

Q. You spoke of Col. Hammond having participated in the distribution of the fund realized from the sale; isn't it a fact that the extent to which he participated was as attorney for Mrs. Sallie T. Huguley?

A. Well, in the distribution in that. But he acknowledged service on the motion to confirm, representing the defendants, and I never heard but what he did represent them; I suppose he did.

Q. Weren't you of the legal opinion, up to the time this second appeal was taken, that a second appeal could not be taken after one had been abandoned?

A. Well, yes, I was inclined to that opinion. After an appeal had been entered and abandoned, and the property sold and the proceeds divided, then that no appeal could be taken.

Q. Weren't you also of the opinion, as a lawyer, at that time that an appeal could not be taken by a party who had permitted a decree pro confesso to go against him?

A. Yes, I am of that opinion still, especially as to any matters that occurred in the procedure prior to the decree pro confesso, and I understand the Supreme Court of the

United States have so decided. I may be wrong about it; that that appeal would only reach the procedure up to the time of the decree pro confesso; that is, could not appeal on the merits.

Q. As to this distribution and other proceedings subsequent to the decree and sale, Mr. W. T. Huguley was not notified of the facts, was he?

A. No, sir, I do not think he was.

Q. The reason was you relied upon the effect the decree pro confesso?

A. Yes, I don't think the record will show that he was served with notice of the distribution.

Q. Were you consulted by Mr. Lanier, prior to the sale and told by him of the arrangement that had been entered into between the bondholders, himself, Dallas and Kirby?

A. Only this, that Mr. Lanier, Mr. Dallas and Mr. Kirby were a committee of all the bondholders, except Mrs. Sallie Huguley and the bonds held by Jannopoulo, and perhaps one or two others?

A. I don't remember. They were the bulk of the bondholders.

Q. They were a committee?

A. Yes, sir; they were clothed with the power to buy the property if the interest of the bondholders required such action.

Q. Did you know of any other property than that embraced in the decree that was owned at the time by The Alabama & Georgia Manufacturing Company? It was, in fact, an insolvent corporation that had gone practically out of existence?

A. Well, it was insolvent; it had been sold in Harris county, in 1890.

Q. Subject to these bonds?

A. Yes, sir; and it had transferred the property to The Huguley Company, and we had sold it out again.

Q. It was utterly insolvent?

A. I so understood it. I can say this, that I heard somebody say that The Alabama Company, had some claims against some one in New York for a small sum of money; two or three thousand dollars.

Q. But it was insolvent?

A. Yes, sir. I don't believe that claim ever materialized.

Q. I will ask you now, Colonel, if, in that condition, you would have advised or did advise the Laniers not to buy unless they could be assured the appeal would be abandoned?

A. Well, I did not advise them to buy unless the appeal was abandoned, because, as I understood, the appeal was already abandoned. I was giving advice upon a state of facts.

Q. You did not advise them to buy because the appeal had been abandoned, you state now?

A. That is what I did advise on. I was not advising them at all on the hypothesis which you put in question, but the appeal had already been abandoned. But I tell you frankly, I would not have advised them to have bought it if the appeal had been prosecuted; unless they had bought it for a less sum of money.

Q. Did you know of any other property out of which you could have made that decree?

A. I did not.

Q. It was the only resource?

A. Yes, sir.

Q. You would have advised them not to purchase?

A. I certainly would have postponed the sale, if that appeal had been carried on.

Q. Until it was decided?

A. Yes, sir; that is what I mean.

Q. But was there any other property that you could have made your decree out of?

A. None that I knew of; we didn't have any claim against anything valuable except this property.

Q. Your legal opinion, as a lawyer, at that time, was that no right of appeal existed after the abandonment of the first appeal?

A. Well, to be perfectly frank, I didn't go so fully into that, because the counsel representing the case had abandoned the first appeal, and were doing all they could, as I understood it, to make the property sell for all it could, and I didn't consider at the time that Mr. Lanier bid off the property, whether—I had never discussed the question, and it had never crossed my mind whether there would be a right to a second appeal or not, except that Huguley appealed individually, and I didn't think he could appeal, because I didn't believe that when he had a decree pro confesso against him he could appeal on the merits.

Q. I understand you to say that if you had known an appeal would have been taken, or could have been taken, you would not have advised the purchase at all?

A. No, I wouldn't say that, because I don't know what I would have done, because it never entered my mind that an appeal would be taken. I didn't suppose a party, after he had a decree against him and had abandoned his first appeal, who stood by and saw the property sold could go and employ other counsel and bring an appeal. I don't know what I would have done.

Q. You didn't ask Huguley, at the sale, or his attorney, Arnold, whether or not they intended to appeal, did you?

A. No, sir.

Q. You didn't ask Mr. Orrick at that time whether he intended to appeal or not?

A. No, sir; but my recollection is that Mr. Orrick told me, after the property was knocked off.

Q. I am speaking of prior to the sale; you didn't ask him anything about that?

A. No, sir; I don't think I did. I asked him the night before at the Kimball House. I thought then he was here for the purpose of buying the property for the St. Louis Trust Company, but I do want to state that after the sale was over Mr. Orrick told me he had given up the fight.

Q. Were those his words?

A. That is the substance of it.

Q. Do you remember his words?

A. I don't think I do.

Q. Where did that conversation occur?

A. It occurred either on the sidewalk or on the pavement there in front of the court house, or coming away from there. He and I came away together.

Q. Do you remember who else was with you?

A. No, sir; I do not. I think quite a bunch of us came together. I think Lanier was along. I know I asked Orrick to see me and he said he would come after a while, and did come and pay his respects that evening.

Q. Did you know for whom Col. Hammond bid when he bid? Was it not for Mrs. Sallie Huguley?

A. I think he said that he was bidding to protect her.

Q. Well, his bid was less than the amount of the decree?

A. It was $65,000.

Q. And the next bid by Lanier was principal and interest?

A. I can't remember the figures, but I think it was $66,000.00.

Q. Mrs. Sallie Huguley wasn't a party to this original bill was she?

A. No, sir, she was a bondholder. None of the bondholders were parties.

Q. You say at the Kimball House, the evening before the sale, you saw Orrick, and he told you that the decision beat the record?

A. Yes; that he ought to have won the case.

Q. Wasn't that the substance of his conversation?

A. Yes, sir.

Q. As far as it went?

A. Yes.

Q. Do you mean to say that before Mr. Lanier bought you went over with him and mentioned all the details of these different conversations you had with Orrick and with Hammond and all these people?

A. I didn't say anything to him about what Orrick said. As I now remember, Dallas argued against the bid, and while they were trying to make up their minds about coming in and bidding for the property, the question came up as to whether Nat Hammond would give any more trouble, and Lanier and I both told him that Hammond said there would be no more trouble.

Q. Did Col. Hammond ever tell you there would be no appeal in this case?

A. No, sir; I don't say that. I said that Hammond said the purchaser would get a good title, and that is what we told Dallas.

Q. Did you go to Col. Hammond, the attorney on the other side, to determine whether the purchaser would get a good title or not?

A. No, sir.

Q. He was the opposing lawyer?

A. Yes; he was there in both capacities I understood.

Q. Did you go to him to advise you whether or not you would get a good title at the sale?

A. No, sir; I am not in the habit of doing that. He said the fight was over and there would be no more litigation about it.

Q. When did he tell you that?

A. He told me that at least a month before the sale.

Q. Where?

A. He told me that in the Gate City Bank Building.

Q. In whose presence?

A. Nobody but himself and I.

Q. In his office?

A. No, I think we were going up in the elevator at the time. I had an office in the rear of the building and his office was in front, and I think we started down in the elevator together.

Q. Was it running or standing still?

A. I don't remember. I think he told that in my office. It was well understood by Mr. Hammond.

Q. How did he happen to say it to you twice?

A. We were just talking about it.

Q. Did he come and say to you the second time that there would be no further fight?

A. No, sir. He first said his impression was there would be no appeal.

Q. Isn't it a fact he told you the parties were unable to give the bond, and for that reason he thought there would be no appeal?

A. No, sir; he didn't say that.

Q. Didn't he, in connection with what he told you, tell you that the parties had been unable to make the bond?

A. No, sir; he didn't say that. He said Jannopoulo wouldn't make it.

Q. Didn't he tell you further that unless they paid him an additional fee he wouldn't appeal?

A. No, sir; he didn't tell me that. Col. Hammond is very reserved, you know, about whether or not he gets his fees. He doesn't go around telling people.

Q. Didn't he tell you that unless Huguley paid him a fee he would not appeal?

A. No, sir; he did not tell me that. He didn't tell me he represented him, or ever had; he always said he never did.

Q. You bought, after the notice from Huguley, given at the sale by his attorney, and didn't enquire at all?

A. I made no inquiry. I thought the parties to the litigation were satisfied.

Q. Wasn't he a party to the litigation?

A. I didn't consider him an active party.

Q. Did you have any assurance from him, before you bid that he wouldn't appeal?

A. I never did. I never asked him.

Q. (By Mr. Brewster.) Well, do the pleadings disclose that W. T. Huguley had any interest in that matter as an individual, at all?

A. None on earth, as I remember.

Q. He was simply a member of the Huguley Manufacturing Company?

A. Exactly, and the record shows——I don't think a portion of the record was up here. I don't think Buck's report went up; anyhow we didn't have Hammond's statement before the court; didn't have what he represented about the party getting a good title.

Q. Everything that appeared upon the face of the record you had there?

A. I presume we had all of the record there, but I think may be Buck's final report was not there, because he made it afterwards.

Q. He made it after the appeal?

A. Yes, sir; and it never went up. *You will find it there; it is in writing.*

F. A. Arnold, being next duly sworn, deposed as follows:

Direct Examination by Mr. Abbott.

Q. You are an attorney at law at this bar?

A. Yes, sir.

Q. Were you present at a sale of what is known as the Alabama & Georgia Manufacturing Company property, be-

fore the court house door of Fulton county, on the first Tuesday in September, 1892?

A. I was present at a sale before the court house door of Fulton county in a case in which Mr. Huguley was interested; the name of it I do not exactly remember; nor the date of it.

Q. Did you prepare and read a notice to the public, before the sale began, for Mr. Huguley?

A. I did.

Q. Where is that notice?

A. I do not know.

Q. You haven't it have you?

A. I think not.

Q. When did you last see it?

A. I do not remember to have seen it since I read it on that occasion.

Q. It was a short notice, was it?

A. It covered, according to my recollection, about a page or less.

Q. What was the contents of that notice? If you can not give the exact language, give the substance? give the contents of the notice as near as you can recollect it?

A. I don't remember the contents of it.

Q. Well, what was it about?

A. I don't remember the details of the notice, unless my memory could be refreshed by the paper, or by calling my attention to its recitals.

Q. Did or not that paper purport to put the public on notice of a claim on anybody, and if so, on whom, as against the property about to be sold?

A. I think it did purport to put the public on notice of a claim of Mr. Huguley about something; the details of which I do not now recollect.

Q. Was anything said about W. H. Huguley & Co.?

A. My recollection is it was the firm of W. H. Huguley & Co.

Q. What property did it refer to?

A. That referred to the property about to be sold. The notice was in reference to the property then offered for sale.

Cross Examination by Judge Chilton.

Q. You say you could not be positive about the contents of the notice?

A. No, sir; I have no recollection of the contents of the notice.

Q. It was a notice to bidders at the sale, and was read by you as an attorney representing Mr. Huguley?

A. Yes, sir; that is right.

Q. Mr. W. T. Huguley was the one who requested you to make the announcement?

A. This gentleman here (indicating) yes.

Q. Was there any question asked you by Lanier or others as to what the paper was about, after it was read? You just read it and stopped, and that was the end of it, was it? There was no inquiry as to it?

A. I don't remember any inquiry having been made of me by anyone, at the time the notice was read. Mr. Huguley came and got me to prepare a notice and read it, and it just passed out of my mind. I didn't get any fee for it, and it just ended there; it didn't make any impression on me at all. I am sorry I can not give you more definite information about it.

The foregoing depositions were taken before me, as stated in the caption, and the answers reduced to writing by me, and I certify that I am not interested in the cause, nor of kin or counsel to either of the parties.

[SEAL] H. L. PARRY, Commissioner.

United States of America, Northern District of Georgia.

In the Circuit Court of the United States for the Northern District of Georgia.

To Z. Hagedorn, H. F. Woodyard, E. B. Reed.

Whereas, There is a certain matter in controversy now pending and to be tried in the said Circuit Court, between J. J. Robinson, et al. and Huguley Manufacturing Company.

And Whereas, W. T. Huguley is a material witness in said suit on behalf of the dependant and can not attend said Circuit Court in person without manifest inconvenience.

Now Know Ye, That reposing special trust and confidence in your prudence and fidelity, you are hereby appointed, and you, or any two or more of you, are hereby authorized and required to cause the said W. T. Huguley personally to come before you, and after being duly sworn, to examine him concerning the said suit, agreeably to the interrogatories hereunto attached; and the answers to the same being plainly and distinctly written, you are to send the same, together with this writ closed up under your hands and seals, to the clerk of said court, at Atlanta, Ga., to the court now in session.

Witness, The Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 18th day of May, 1894.

O. C. FULLER, Clerk.

(Seal.) By GEO. S. BARNARD, Deputy Clerk.

Deposition of W. T. Huguley.

J. J. ROBINSON, TRUSTEE, ETC., *vs.* HUGULEY M'F'G COMPANY ET AL. } In the Circuit Court of the U. S., Northern District of Georgia.

Petition of defendants to vacate sale and for accounting of purchasers.

Interrogatories propounded by W. T. Huguley, a material

witness for petitioners in the above entitled cause, the answers to which to be read upon the hearing of the petition.

Interrogatory 1. Where do you reside?

Interrogatory 2. What business connection, if any, have you had with The Alabama & Georgia Manufacturing Company? Were you acquainted or not acquainted with the physical condition of the factory of said company while the same was operated by the Alabama & Georgia Manufacturing Company, and while the same was operated by the Huguley Manufacturing Company? Describe said factory buildings with respect to machinery that could be placed therein.

Interrogatory 3. At what date did the Huguley Manufacturing Company take possession of said factory? Describe the physical condition of the property at said date including the main factory building, and all of the buildings used in connection therewith? How many looms were there in said factory building? How many spindles? How many cards? Describe fully all of the machinery in all of the buildings? How long before said date had any new machinery been purchased? Within a period of eight years next before the Huguley Maufacturing Company took possession, what addition had been made to the machinery and betterments of said factory? If any such additions were made, state in what they consisted each of the said eight years, that is to say, describe what machinery and betterments were added each year, and costs of same.

Interrogatory 4. Are you familiar or not familiar with factory machinery and the operation thereof? State your experience in said matters? How long have you been engaged in manufacturing?

Interrogatory 5. What was the character of the goods manufactured by said factory, that is to say, was it duck, sheeting or of any other quality? What was the physical condition of the mill with respect to capacity to make goods at the time the Huguley Manufacturing Company took pos-

session, and in respect to the quality of the goods it was then capable of making?

Interrogatory 6. What addition or repairs, if any, were made to the plant and machinery of said factory while same was in the possession of the Huguley Manufacturing Company, and at what costs were the same made? State whether while the Huguley Manufacturing Company were in possession, the capacity of said plant and machinery was increased, and if so, state how, and to what extent? State fully the physical condition of said plant and machinery at the time same was purchased by Lanier, Dallas and Kirby, under the order of the sale? How did said condition compare with the condition of said plant and machinery during the administration of the Alabama & Georgia Manufacturing Company and how did its capacity compare with its capacity under said former administration? At the time said Dallas and others purchased, state whether the mill was in full operation? With reference to operatives, state whether there was a sufficiency, and where they resided?

Interrogatory 7. State whether or not there are automatic sprinklers in the Alabama & Georgia Manufacturing Company Mills? If so, when were they placed there? What was the rate of insurance before the application of said sprinklers, and what has it been since?

Interrogatory 8. Who was president of The Alabama & Georgia Manufacturing Company when it was sold under the decree in this cause? Who is president now? Did you give or cause to be given any notice at said sale? What was that notice in writing? To whom did you deliver it? State the purport or substance of that notice. In making said notice, whom were you representing? Were you interested at said time in the Huguley M'f'g Co.? Did you at said time hold any official relation with it? If you say such notice was given, state who made the announcement. Was or not, said paper read at the time of said public sale, and

in the presence and hearing of all persons present? State whether or not you had at or before said sale, or afterwards ever stated to any person that you or the Alabama & Georgia M'f'g Co., or the Huguley M'f'g Co. had ever abandoned the right to appeal said case. Whether or not you had ever authorized any one to make any such statement. State whether or not John C. Orrick or N. J. Hammond made any statement at said sale, that the right to appeal had been abandoned, or that the same would not be prosecuted. What effort, if any, did you make to give supersedeas bond as required by the court at the first appeal, and how long did such effort continue after the date of the decree under which sale was made? State whether or not you voluntarily abandoned the first appeal, or whether the failure to prosecute was from inability to give supersedeas bond.

Interrogatory 9. Were you present or not at a sale of the said Alabama & Georgia M'f'g Co., made under the decree at Hamilton, Ga., January, 1890? What did said property bring at said sale? What was the next highest bid to price called, and by whom was it made? How was it payable, in money or in bonds? Was such sale subject or not to any incumbrance? If so, how much? How did the physical condition of said factory and its machinery compare at the date of said sale, with the sale under the decree in this cause? After the purchase at the sale in Hamilton, how much, if anything, was added in the way of machinery and betterments before the sale under the decree. What was the value of such additions?

Interrogatory 10. Was there any insurance or not on the main building of said factory and machinery therein contained, on July 1, 1890, January 1, 1891, and on the date of the sale under the decree in this cause? If so, state the amount at each of the dates. What was the difference at said dates, between the actual and insurable value of manufacturing plants such as this?

Interrogatory 11. State whether or not the Alabama & Georgia M'f'g Co. (or Huguley M'f'g Co.) has been kept steadily in operation throughout the whole time since September 6th, 1892, up to date.

Interrogatory 12. State what is the customary charge or estimate usually allowed by the cotton mills of the country for the items of "Wear and Tear," or depreciation in machinery and plant.

JOHN M. CHILTON,
JOHN C. REED,
Solicitors for Petitioners.

Cross Interrogatories to be Submitted to W. T. Huguley.

1st. Where was the factory, The Alabama & Georgia, and which is now in dispute, built? Has the size ever been increased? At first, was it filled with its compliment of machinery, such as spindles and looms, etc.?

2nd. After being first supplied with machinery, was that machinery or any of it ever removed? Be so kind as to give us a detailed statement of the number of spindles and looms originally placed in the factory? And if any of them were ever removed, how many of each and when, and what became of such as were removed?

3rd. How many spindles were afterwards added? How many looms, and give exact date when each were added? Was any machinery removed to make room for this new machinery?

4th. How many spindles and looms were there in this factory at the time of the sale when bought by Lanier, Dallas & Kirby?

5th. What does it now cost to build and place with its compliment of all necessary machinery a cotton factory, per spindle? That is, suppose you should build a factory with a capacity of 10,000 spindles, with the necessary looms and all other proper machinery for such a plant, how much would

the whole thing cost, estimated by the spindle? Would it cost $20, $30, $40 or $50 per spindle. Will you please state what was the estimated cost of a cotton factory per spindle at the date of said sale?

6th. After said factory went into the hands of a receiver in 1888, no other machinery was placed in it by the receiver up to date of its sale, was there? If so, what receiver and when and what kind of machinery? If any has been placed in there since the appointment of a receiver up to this date it was placed by Huguley Manufacturing Company, was it not? Now if Huguley Manufacturing Company placed any new machinery after it began to operate the factory, what did they put in it? When did they put it in, and from whom did they purchase it?

7th. You had the management of this factory from about 1880 to some time in 1888, did you not? During that period the factory was either a very poorly equipped concern, or it was badly managed, was it not? For it is true, is it not, that it went into the hands of a receiver in 1888, it owed over and above the bonded debt, as you claimed, of almost $200,000.00? If not, what amount did you claim that it owed? How much did it owe you, your father, and your firm, W. H. Huguley & Company?

8th. In the suit brought by Robinson in the Federal Court to foreclose the deed to secure the bonded debt, you were made defendant, being one of the trustees, were you not? Did you employ any lawyer to represent you in that case, or did you ever file any answer? As to you were there not taken a judgment pro confesso? What interest did you ever set up in that suit that you had in that litigation? If you had any, you did not have it represented, did you?

9th. The Alabama & Georgia Manufacturing Company had no interest in that litigation, did it? Was not all its interest sold under a decree at Hamilton, Harris county? Do you not know that the only person interested in the

property at the time of the sale, under the decree obtained in the Federal Court, was the Huguley Manufacturing Company, and such as said Company owned?

10th. If you say you had any interest in it or W. H. Huguley & Company was it not an interest growing out of a contract with Huguley Manufacturing Company. If you or your firm claim any interest in said property, attach the contract under which you claim such interest?

11th. If you say you gave or had given any notice of any kind at the sale in Atlanta, whom did you represent in giving such notice? If you represent anybody except yourself and your firm, attach the authority by which you acted for any one else but yourself and firm?

12th. If you say you gave any notice at the sale, who read it, who prepared it, what did it contain?

13th. Were Col. N. J. Hammond and Mr. Orrick present at that sale? Did you not have your notice written on paper with Col. Hammond's letter-heads, and did he not tear it off and tell you you had no right to make such use of his letter-heads?

14th. Why did you employ Col. Frank Arnold to write and read such notice? Did not Col. Hammond and Orrick represent Huguley M'f'g Co., and one or both of the bond holders, of the bonds issued by Huguley M'f'g Co.? Why did you not get them, or one of them, to give the notice? Did you not try to get Col. Hammond to give the notice, and he absolutely declined? If not, why did you not have him to give the notice you got Arnold to give?

15th. What is the estimated life of cotton machinery, i. e., how many years is estimated cotton machinery lasts? What per cent of its value is reckoned as loss annually?

16th. Who is now paying the expenses of carrying this litigation on on your side, and who is to pay it? If you have any written obligation of any kind from the Huguley M'f'g Co., binding it to pay any of said expenses, attach it to your

answers. If none by it, then if you have any such written obligation from any person or corporation or company to pay any of these expenses, attach such writing to your answers. If anybody has undertaken to bear any of such expenses by writing or verbally, state who such person is.

17th. Is it not true that you and your firm alone are carrying on this litigation, and you only have the privilege of using other names on condition that you are to assume all expenses?

B. F. ABBOTT & SON,
DORSEY, BREWSTER & HOWELL,
Defendant's Attorneys.

J. J. ROBINSON, TRUSTEE, &c., *vs.* HUGULEY MANUFACTURING CO., ET AL. } In the Circuit Court of the U. S. N. Dis. of Ga.

Petition of Defendants to vacate sale and for accounting of purchasers.

By virtue of a commission issuing out of the Honorable Circuit Court of the United States for the Northern District of Georgia, to us directed we have caused Wm. T. Huguley, the witness in said commission named to come before us, and being duly sworn, true answers to make to the interrogatories to said commission annexed, deposes and answers as follows—

To the first Interrogatory he answers:

Interrogatory 1. I reside in West Point, Ga.

Interrogatory 2. From 1880 up to 1886, I was Vice-President and Agent, also a Director. In 1886, I was elected President. In 1882, my firm, W. H. Huguley & Co., who owned about half the stock became Secretary and Treasurers of the corporation.

In one or the other of these relations, I have had virtually complete control and management of the business from July 1, 1882, up to July 1, 1888. Pending the receivership,

other than as a director, I had no official connection with the Alabama & Georgia M'f'g Co., until the same was succeeded in 1890 by the Huguley Manufacturing Company.

I was acquainted with the physical condition of said factory property at the time referred to. The main factory building is a massive structure, 4 stories and attic. The base is of stone and the four upper stories are of brick, with a strong partition or fire wall. Dimensions of main building 60x220 feet. Roof of tin. Built in 1868. Original cost (about) $75,000.

Picker house of stone complete. Two stories and basement. Roof of tin. Dimensions 60x80 feet. Built in 1883. Original cost (about) $10,000.

Warehouse and mixing room of brick cost (about)...$2,000
1 office and supply house of stone cost (about).....$1,000
1 store of brick cost (about).....$2,000
1 superintendent's dwelling of brick cost (about)....$2,500
1 boiler house, pump house and outer houses cost (about) $2,500
60 operative houses—4 rooms each cost about $350 at $400, each $25,000

Total cost of buildings.....$120,000

As to the capacity of said buildings, with respect to the machinery that could be placed therein, in addition to the present line of machinery now in operation, say 208 looms and 7,000 spindles, and complete outfit, there still remains floor space water power under control ample to accommodate about 700 more looms and about 5,000 more spindles, together with complete equipment.

Interrogatory 3. The Huguley Manufacturing Company succeeded to the property in 1890.

The main building was erected in 1866, and no pains nor expense originally having been spared in its erection, was found to be in excellent physical condition, barring the base-

ment floor which had decayed for lack of use. The roof had also become impaired. The picker building, also a substantial structure, needed reflooring, and the water house, dams, &c., were in a bad condition.

All, the outer buildings, such as warehouse, residence and operative houses (about 60 in number) were in fair condition, but showed the usual neglect of repairs incident to the receivership, and the actual stoppage for the six months preceding.

In January, 1890, when the Huguley Manufacturing Company took possession of the property, for prudential reasons and as a matter of reference in the event of fire, I caused to be made a careful inventory of all the machinery and appurtenances thereunto belonging. There were at this time in said factory buildings 208 looms, 7,000 spindles, 74 cards together with the complete outfit of machinery accompanying same.

For the full description called for under this Interrogatory, I attach herewith, as part of my answer, copy of said Inventory, marked "Exhibit A" which is a duplicate of the Inventory made in 1890 by Higginbotham, Brown & Nolan.

Prior to said date, January, 1890, the records show that new machinery and betterments were constantly added from year to year throughout my administration up to as late as 1888.

In 1880-1, when I first became actively identified with the property, I found in operation only 96 looms and about 3,500 spindles and outfit, with a capacity of only six and seven bales of cotton and an output of say 5,000 and 6,000 yards cotton duck per day.

With a superabundance of floor space, water power, etc., at command to utilize same, we first purchased in 1881-2 enough new machinery to bring our capacity up to the following basis:

128 Looms,

36 Foss & Pevey Cards.
19 Roller Cards.
5,500 Ring Spindles.
360 Spooler Spindles.
7 Slubbers.
4 Warpers.
3 Roving Frames.
2 Howard & Bullough Slashers.

To accommodate this new line of machinery, we had to provide, at great expense, a new water-house, new water-wheels, and a large amount of new supplies and findings. A large number of new operative houses were built, the dam repaired, etc. The entire cost of all this new machinery, new supplies and the necessary betterments approximated $55,000 or $60,000.

Of the machinery, we paid only $10,000 cash down, and gave our notes for the balance to the Bridesburg Machine Shops and others amounting to say about $40,000. These notes matured 6, 12, 18 and 24 months respectively, and were all subsequently retired by me out of the profits.

The next important purchase of machinery was about July, 1883, when we applied the following:

1 Lapper	$1,150
7 Cards	2,450
2 Drawing Frames	600
2 Spinning Frames	1,224
1 Slubbing Frames	708
	$6,132
To the latter ($6,132) add for freight setting up, new supplies, new operative houses and other betterments	6,000
We also built a new Picker House 60x80 feet and other houses	12.000
Total expenditures for 1883	$24,132

I note further remittances for new machinery as follows:

July, 1883	$5,156.14
October 9, 1883	6,677.20
January 1, 1884	2,000.00
May 5, 1885	1,400.00
August 4, 1885	1,357.86
August 4, 1885	1,413.00
September 24, 1885	7,500.00
October 12, 1885	1,500.00
April 26, 1886	2,000.00
Total	$29,004.20

Of course, in nearly every instance where new machinery was added, an expenditure of large sums for additional operative houses, water power, etc., became necessary.

The next important purchase and the last during my administration, was on November 2, 1887, when we received the following new machinery:

44—36 Looms.

8—40 Looms.

1,600—Warp Spindles.

400—Speeder Spindles.

1 Speeder of 120 Spindles.

1 Spooler of 80 Spindles.

8 John Elce & Co. Roller Cards—45x36, together with Slubbing, Roving, etc.

This last lot of new machinery, together with all necessary supplies, findings and betterments, freights, etc., cost about $30,000.

Thus it will be seen that within the six years of my administration, the facts are that new machinery, betterments, etc., were applied at an aggregate cost of about $115,000 or $120,000, all of which was duly paid for by me.

Interrogatory 4. While not an expert machinist, I am quite familiar with factory machinery and the operations

thereof. I have made the business a study for the past fifteen years, within which time I have thoroughly posted myself not only as to the latest and most improved patterns and inventions on the market, but have likewise qualified myself to judge as to the quantity and quality of goods said machinery can and ought to produce, as well as the cost of manufacture thereof.

Interrogatory 5. Originally and prior to 1880, the mill had been equipped essentially as a sheeting mill.

In 1880.—1, the organization of the plant was entirely changed, and while still adapted to the manufacture of sheetings, at great outlay, the plant was equipped especially with an eye solely to the manufacture of Cotton Duck.

As an adjunct, (and one of the most profitable), the mill was also equipped for turning out a large amount of Cotton Batting.

In consequence of the receivership, which dated from Oct., 1888, the improvements and betterments, which for years prior thereto had been steadily going on, necessarily were ceased, pending the receivership, little or no new supplies and findings &c., were purchased even during the time the mill was kept running, and finally, about June, 1889, by reason of certain attachments levied on the "quick assets" of the Receiver (at that time amounting to about $25,000), the receiver was compelled to close down the mill. The cessation of all active operations for more than six months (i. e. from June, 1889, to January, 1890), had the effect to disperse the operatives; the machinery, for lack of use became rusted; the roof of the main building became impaired; the water house, dam, &c., were broken; and all the operative houses and other buildings bore the air of neglect and general need of repairs incident to such stoppages.

Interrogatory 6. Immediately after the sale at Hamilton, Ga., in January, 1890, and the pending organization of the Huguley Manufacturing Company, my firm W. H. Huguley

& Co., took charge of said property, and at an outlay of several thousand dollars, again re-assembled an adequate force of operatives, and employed them assiduously in restoring the mill and its surroundings to good running order. The Huguley M'f'g Co., being organized shortly thereafter, continued the work of repairs. The dam was repaired; a new water house was put in; the roof of the main building was renovated; three new operative houses were erected; and all the others, (about 60 in number), were repaired; the basement floor of the main building and the floor of the cloth room were underpinned and renewed. Besides these general repairs, B. F. Gambrill an expert cotton duck manufacturer and mill engineer, was retained, and under his supervision, Logan Owen, superintendent, aided by John T. Higginbotham, organized a force of machinists, and at a cost of $400 to $500 per month, were kept repairing and polishing up the machinery for months, indeed, up to September, 1892, when we were compelled to vacate under order of court. All the cards were refitted with new card-clothing, and numberless pieces of new machinery, fixtures and improvements were added. New supplies and findings were purchased, and in short everything else contributed to make the machinery as efficient as possible.

Notably, one of the biggest improvements instituted consisted in the thorough overhauling of all the English spinning frames (about 2,000 spindles), which by the application of a new device, increased their revolutions 50 per cent, and made them as efficient as the latest, improved spinning. In addition to this, all the new machinery which had been bought, in 1887-8, including the 12-40" looms were applied, together with the 40-36" looms and outfit. All these repairs, new machinery, betterments, etc., were accomplished at an outlay of $15,000 to $20,000.

During the administration of the Huguley M'f'g Co., new supplies and findings were purchased at a cost of $11,000.

From the foregoing it will be seen that from the date they succeeded to the property in January, 1890, the steady purpose and policy of the Huguley M'f'g Co. was to bring the mill up to the highest standard of efficiency. I can therefore answer of my own knowledge, that at the time of the sale under the decree of Dallas, Lanier & Kirby, the physical condition of said plant and machinery was most excellent.

As more than half of the machinery had been applied within an average of 4 or 5 years, and much of it as late as 1887-8 all at a cost exceeding $100,000 with the overhauling mentioned, the equipment on Sept. 6, 1892, as an entirety, was wellnigh modern, certainly, for the purposes designed, was well capacitated to turn out "a maximum production at minimum cost."

As compared with the condition of the plant and machinery during the administration of the Alabama & Georgia M'f'g Co., particularly, during the interim of the receivership, the condition and capacity of the Huguley M'f'g Company's plant at the time they vacated on Sept. 6, 1892, was decidedly better than it had ever been, by experts, such as Owen, Higginbotham and others, reckoned at 25 *to* 100 *per cent. better.*

As nearly as I can approximate, the increased efficiency and capacity of the plant, as a whole, on Sept. 6th, 1892, was 40 to 50 per cent.

Up to Sept. 1st, 1892, we kept the mill in full operation. In anticipation of the sale fixed for the 6th Sept. the Huguley M'f'g Co. then closed down the mill, and leaving in the custody of the Supt. (Higginbotham), a large amount of supplies and findings, and other "quick assets," we withdrew from the field.

At the time of closing down (Sept. 1), there was a sufficiency of operatives, all of whom resided at the mill, and continued right along in the employ of the new incumbents.

Interrogatory 7. There are automatic sprinklers in the mill.

Formerly, on the line of $200,000 of insurance carried by us, we had to pay the rate of $1.40—$2,800 per annum.

The complete system of automatic sprinklers, new steam fire pump, tank, etc., were applied in 1887 at a cost of $4,000 to $5,000. In return for this expenditure the South-Eastern Tariff Association rated the mill "standard," and accorded us a rate of only 55-100 per cent, or within 5-100 per cent of the lowest rate accorded any standard mill. This alone reduced the insurance and effected a saving of $1,700 per annum.

Interrogatory 8. W. H. Huguley was the President and is now.

I did give such notice. Mindful of the appeal to be prosecuted, and acting upon the best legal advice, immediately after A. E. Buck concluded reading the advertisement of sale which had been appearing over his signature as "U. S. Marshal," and just before he proceeded to cry off the property, standing by his side, I caused to be distinctly read aloud in the presence of all hearers, among whom were Lanier, Dallas and Kirby, the committee representing the bondholders, the following: "This property, be it understood, is sold subject to any and all claims and equities of W. H. Huguley & Co. or the Huguley M'f'g Co. on or in this property, and they hereby publicly announce that they reserve any and all rights to contest or attack this sale on any and all grounds." This announcement was read by Mr. Frank Arnold, attorney, and I thereupon handed same to Col. Buck, with request that it be preserved. At the time of said sale, I was interested in the Huguley M'f'g Company in the relations of a director, and as chairman of the Auditing Committee, of which our attorney, Judge Chilton, was the other member. As such in making said notice, I was representing.

1. The Huguley M'f'g Company, by virtue of certain

understandings and resolutions of the Board of Directors at certain meetings in St. Louis, called by the President of the Company in April, May and June preceding the sale of Sept. 6th, 1892, said meetings having been called for the express purpose of providing to meet the issues precipitated on the company by the adverse decree.

2. My father, the president of The Alabama & Georgia Manufacturing Company, whose power of attorney or proxy I have been acting under for many years.

3. Also, I was further representing my firm, W. H. Huguley & Company, who at the time (September 6th, 1892) owned nearly every dollar of the capital stock of $200,000 of the Huguley Manufacturing Company, who, therefore, for no fault, nor neglect of their own, were about to be made the innocent and sole sufferers under said sale.

4. Lastly, *myself*, as one of the trustees of the first mortgage bondholders.

Neither at, nor before said sale, nor afterwards, have I ever authorized or stated to any person that I, or the Huguley Manufacturing Company, or the Alabama & Georgia Manufacturing Company, had ever abandoned the right to appeal said cause. Nor did I ever authorize anyone to make such statement. Nor did John C. Orrick nor N. J. Hammond make any such statement at said sale. On the contrary, from what transpired in the director's meetings in St. Louis in April, May and June preceding the sale, said Orrick well knew that, as Mr. D. Jannopoulo, *individually*, refused to take any steps towards making the supersedeas bond or to pay the further fee being then exacted by N. J. Hammond, W. T. Huguley and Judge J. M. Chilton (himself a director) did then and there undertake to make supersedeas bond and to represent the Huguley Manufacturing Company in the prosecution of said appeal. Col. Hammond was likewise apprised of these facts, and it was only due to Jannopoulo's

refusal to advance further fees that he dropped out of the case.

I never, at any time, voluntarily abandoned the first appeal. Our failure to prosecute it was from sheer inability to make other than the supersedeas bond, as explained (i. e. by the American Surety Company). Our inability grew out of the following facts:

1. Because we had turned over in 1888 to Fisher, the receiver of the Alabama & Georgia Manufacturing Company a large amount of "quick assets" (about $40,000) in self defense having the following order of court (May 22nd, '89) passed:—"*Said Fisher, receiver, shall promptly pay the past due interest, and the interest to accrue, when due, on the first mortgage bonds of said corporation out of any funds he may have while he remains in office.*"

The receiver thus charged with this particular duty, did pay said interest and continued to act under said order up to date of said alleged default, and it is now insisted that said receiver *had in hand on the date of said alleged default ample cash funds with which to pay said interest,* and he undoubtedly would have paid said interest had proper demand been made on him. It was his duty as the only legal representative (except the president) of the Alabama & Georgia Manufacturing Company to pay said interest and failing to have done so, he should have taken steps, with the funds in hand, to have aided in making the supersedeas bond and thus averting the foreclosure. Though importuned to do so, he took no steps to carry out said original order of the State Court and thus the funds in his hands were not available in the protection of his said trust.

2. So also, my hands were tied in another direction. Under a certain lease contract, I had resigned the presidency of the Huguley Manufacturing Company and transferred to D. Jannopoulo, St. Louis, all the "quick assets" of the company, it becoming incumbent upon him, in turn to *keep the mill a*

"going concern" to meet all its current expenses, and especially take care of the interest on the bonds. This contract was made in 1890 and expired by limitation in 1893. Said Jannopoulo is a foreigner, and little versed in matters of law,—besides owning but a few shares of stock in the company. (40)

Hence, on going to St. Louis in April, 1892, to confer with him about making the supersedeas bond, Judge Chilton, another stockholder and director accompanying me, we found said Jannopoulo seemingly so disheartened at the adverse decree, that in face of the express terms of his contract, and his duties thereunder, and despite the fact that *he held large amount of "quick assets" belonging to the Company,* (against which he claimed advances), he absolutely refused to take any steps whatever to protect the company either by making the bond or paying Col. Hammond the fee exacted for continued services in prosecuting the appeal.

Having exhausted our efforts in this quarter, I went to New York and made application to the American Surety Company, of which Messrs. N. J. & T. A. Hammond were attorneys for Georgia. The negotiations in behalf of the Surety Company were conducted with me solely by Mr. VanRenssaler, head counsel. The outcome was that for a moderate charge, Mr. VanRenssaler entered into and signed up with me an *unconditional written contract* that his company *could* and *would* make the supersedeas bond. Pursuant to this contract, Messrs. Hammond were authorized to tender such bond to the amount even of the 1st Mtge. bonds ($65,000) if necessary Mr. VanRenssaler giving me an affidavit of the financial condition of his company, together with a formal agreement to be tendered to the court. Meantime Col. Hammond advised that he had secured a reduction of the amount of the bond to only $10,000, whereat Mr. VanRenssaler expressed himself even more pleased to undertake the commission, which he promised me faithfully to have carried out. At no time was any collateral enacted as a

condition precedent to making said bond and no such stipulation appeared in the contract. When asked why so moderate in his charges (*only* $350.) Mr. VanRenssaler replied, "Because I have read the record in your case and you are sure of a reversal, besides, we incur only the trifling risk of actual court costs, and we always gauge our charges in promotion to the risk incurred."

Relying upon these assurances, I sailed by Savannah, arriving in Atlanta only a few days before our limit expired. I was amazed to learn from Col. Hammond that the bond had been rejected, and promptly wired the American Surety Company:—

"*Bond for* $10,000 *declined, grounds non-residents. Have written contract with Mr. VanRenssaler to make bond; answer.*"

To this Mr. Benedict, assistant counsel, answered that Mr. VanRenssaler had sailed for Europe, but proposing to make bond if secured, by indemnifying resident surety, but on my consenting to hypothecate all the collateral we had, it developed that said collateral was not satisfactory as I had already ascertained was the case with those in Atlanta to whom I had applied. Indeed, before I could have time to move in the matter, our limit had expired.

Throughout the whole time, I was pressing Mr. Jannopoulo as a dernier recourse, to deposit in Atlanta a certificate of deposit for the $10,000, at any sacrifice to my corporation, by way of indemnity for the supersedeas bond, but he utterly refused to come to my rescue and I was powerless. The attached correspondence, marked "Exhibit G" will show what Herculean effort I made in the premises.

In conclusion it is proper for me to explain that *because of the order of the State court, I had to transfer to the Receiver about* $40,000, *of "Quick Assets" and in view of the special order of court charging him with the particular duty to pay said interest and knowing he had ample cash in hand, I specially*

relied on him to meet the interest otherwise and take such steps as would protect his said trust under the circumstances.

Being "tied up," as explained, both through the receiver and the contract with said D. Jannopoulo, and embarrassed by the litigation, my firm and corporation were so "handicapped" that I could not make the supersedeas bond locally, particularly within a day or two allotted me after ascertaining the Surety Company's bond had been rejected.

Interrogatory 9. I was present at the Receiver's sale at Hamilton, Ga., in January, 1890. The property was then sold as follows:

1. Subject to the 1st. Mortgage Bonds	$65,000
2. Subject to certain Alabama Executions in favor of Bank of LaFayette, Doss et al, now owned by us (about)	16,000
3. Executions in favor of W. H. Huguley & Co., considered as cash	56,880
4. Cash from W. H. Huguley & Co.,	12,120
Total cost (as to Huguley M'f'g Co.)	$150,000

The next highest bid was within $500 of the bid at which the property was knocked down. *It was made by L. Lanier, presumably for the Lanier-Boynton syndicate,* and had it prevailed, they would have assumed

1. The first Mortgage Bonds	$65,000
2. And then had to pay cash,	84,500
Equivalent to cash bid of	$149,500

Under interrogatory's 5th and 6th, I have already testified that the physical condition of the property on September 6, 1892, had been improved 40 or 50 per cent over the physical condition at the time of the receiver's sale in January, 1890, and at that about $20,000 of improvements had been added by the Huguley M'f'g Co., between said dates.

Interrogatory 10. On each of said dates, viz: July 1,

1890, January 1, 1891, and September 6, 1892, respectively, we were carrying on the main building and machinery therein, alone, in the best stock companies *Insurance,* to the amount of $200,000.

I attach hereto, marked "Exhibit H" the pages 44-47-48 from the printed record in this cause, which contain extracts from the testimony of M. B. Torbett, confirming the amount of insurance carried, and likewise proving that the first $65,000 of said $200,000, had been duly and properly set apart in favor of the first Mortgage Bondholders.

The difference, at said dates between the *actual* and the *insurable* value of such cotton mill properties is always 15 to 20 per cent. in favor of the *actual* value; that is to say, that much margin above the *insurable* value being required. This was the basis upon which our property was estimated by Mr. Torbett, and all the other Insurance experts whose particular business it was to visit and inspect the mill from time to time. (See printed record, Torbett's testimony, page 44).

Interrogatory 11. The mill has been kept steadily in operation throughout the whole time, since September 6, 1892. However, formal notice has just been given to the operatives by the present incumbents—(The Galeton Cotton Mill Co.) that the mill will be closed down indefinitely on June 1, 1894.

Interrogatory 12. The customary charge or estimate usually allowed by the cotton mills of the country for "Wear and Tear" or depreciation in machinery and plant, as a rule depends upon the conservatism of the individual manufacturer, and upon the speed of the machinery operated. All the Fall River Mills uniformly allow 8 per cent per annum on the actual cost of the machinery and the New England Mills generally, charge off at least 5 or 10 per cent per annum, before declaring dividends. The Eagle & Phoenix Mills, of Columbus, Ga., the six large mills of Augusta, Ga.,

and all the leading mills of the South allow at least 5 per cent for "Wear and Tear" or depreciation.

Those mills which make no special allowance of a percentage for "wear and tear" *invariably must spend the equivalent in substantial improvements or new machinery each year else such properties rapidly run down.* Many mills in the south adopt this plan of adding machinery and improvements annually in lieu of keeping such "wear and tear" accounts.

Answers to Cross Interrogatories.

Interrogatory 1. The factory (main building) was built in 1866. Subsequently, in 1883 there was erected a picker-house say 60x80 feet as an annex or extension, though 18 feet distant.

Interrogatory 2. At first, only 50 looms and complete outfit for the manufacture of sheeting were applied. Later on 50 looms and equipment more were added, and this 100 looms and about 3,500 spindles and complement of other machinery constituted the entire equipment until I became identified with the property in 1878. The mill was therefore not filled, having originally been constructed with an eye to accommodating about 300 looms and 10,000 spindles, and outfit.

With the exception of the removal of about 2,000 old (English) spindles, and the substitution therefore of the same number of new spindles, I do not think there has been any further removal of any of the machinery until the Galeton Cotton Mills (the present incumbents) took charge. I am informed that *they remove from the premises 40 or 50 of the looms but have replaced only eight of the number and the latter were "second-hand" looms from the West Point Mills. Said machinery was all appropriated by the incumbents and removed while the appeal was pending.*

Interrogatory 3 and 4. My answer to the direct examination—see interrogatory 3rd furnish a complete and exhaustive answer to these two interrogatories.

Interrogatory 5. To answer this, one must know as to what kind of Cotton Factory the estimate is wanted for, i. e., whether for the manufacture of sheeting, duck or some other product. The cost of a plant for making duck is much greater, relatively, than for sheeting, owing to the greater quantity of preparatory machinery, carding, etc., needed. On a rough estimate, in the absence of further particulars, for a model duck mill plant I should fix the cost as about $28.00 per spindle, possibly less. This covers the complete equipment. This estimate would apply to the date of the sale—Sept. 6—92. I note the average cost of all the mills in and around Augusta, Ga., are based on say $28.12 per spindle and about $1,000 per loom and outfit.

Interrogatory 6. No, the receiver adding nothing. My answers to direct interrogatories 3rd and 6th, will show all the machinery and improvements or repairs applied by the Huguley M'f'g Company, and the cost of same.

Interrogatory 7. I became actively identified with the management of the Alabama & Georgia Mills in 1880, but the administration proper of my firm, W. H. Huguley & Co. began July 1, 1882, and continued through 6 years, up to July 1st, 1888, inclusive.

During that period (July, 1882, to July, 1888) the factory was neither "a very poorly equipped concern," nor was it "badly managed," as the records of the proceedings before the State Court plainly prove. Neither is it true "that when it went into the hands of a receiver in 1888, it owed over and above the bonded debt, as you (I) claimed, almost $200,000." The question is as utterly absurd, as it is untrue. To ask me to parade before the court the single item of liability, of a corporation, like the one in question, without placing in juxta-position the "resources" or "assets," as well

even if the amount named in the interrogatory were correct (which I deny), is calculated to mislead. For, it is quite common for corporations to owe a great deal of money in comparison with their capital stock, the Atlanta National Bank, for example, and at the same time be the most solvent and prosperous of institutions. So, in the case of this cotton factory. In Jan., 1888, we were carrying about 2,000 bales cotton valued at over $110,000, and the other "quick assets," consisting of manufactured goods, bills receivable, etc., etc., aggregated quite as large a sum. Naturally then, the mills overdraft with our firm, the bankers of the corporation, was proportionately large.

I made still other reports of the condition of the property during 1888; one for the quarter ending March 31st, 1888, one for the quarter ending June 30th, 1888, and an amended report to the latter in August, 1888, after the rupture came and we were compelled in self defense against the machinations of certain designing persons, to foreclose our mortgage. Notwithstanding the unusually heavy stocks carried throughout 1887—8, (for *"it was a pretty hard year for manufacturing," and cotton was high—10 cts.*) at no time *did we claim a debt within $80,000, of the amount mentioned.* Fortunately, while our counsel introduced as an exhibit before the special master appointed by the State Court, a type written duplicate of my report submitted for the quarter ending June 30th, 1888, (See record pages 430 and 431, vol. II.) I preserved the original report, and I now attach same as part of my answer, marked "Exhibit B." This report shows that while I reported as due sundry persons $18,820, and to W. H. Huguley & Company, $100,294 total $119, 14, I show, on the other hand, as *offset* "quick assets," consisting of cash $7,347.94, cotton, $19,536.91 goods, $6,985, bills receivable $36,302.42 and sundries $8,600, *total $91,207.18.*

Neither can any fair conclusion be reached as to the true

financial condition of the mill at this time (1888), without taking into account the very heavy investment account, i. e. cost of plant which was $321,801.34, as against which only $156,000 of capital stock had ever been issued. In other words, a corporation with aggregate resources of $413,008.52, as against which only $156,000 of stock has been issued, can well afford to carry considerable liability, and still be a most solvent and prosperous concern, particularly if half of said liability is to run fourteen years (as in our case).

In so far as being "poorly equipped" the facts are that within the six years of my administration, I applied new machinery, betterments, etc., aggregating in costs about $120,000, and more than "doubled" the capacity or output of the mill within that period. In other words, in 1880 there were only 96 looms and about 3,500 spindles and their complement of other machinery, representing an investment account of say $200,000. As against this, as shown, I had brought the property up to a basis of 208 looms and 7,000 spindles, together with complete outfit for the manufacture of duck, the whole representing an investment account of $325,000. Therefore, the mill was certainly not "poorly equipped."

No more can it be charged that during my administration the mill was "badly managed," because the real facts are that when my firm was called upon in 1888 to give an account of *our* "stewardship"—we were charged by complainants with "rents and profits," as having been earned, aggregating say $300,000, for the six years. In support of the charge, said complainants introduced among others, an exhibit prepared by L. Lanier and incorporated in their bill showing that for the fiscal year 1887—8, which said L. Lanier testified *"was a pretty hard year for manufacturing, and that cotton had cost as high as 10 cents, the net earnings of the mill had been $32,858.52.* I attach hereto said exhibit of L. Lanier, marked "Exhibit C," detached from said bill.

The testimony of W. L. Lanier (Rec. Page 135 and 141, Vol. 3) was likewise introduced, who proved that the net profits of the West Point Mills (a smaller mill) had been large for the period 1880-1888, say $25,000, to $75,000, net per annum. He further proved that our mill had *netted* $30,000, in 1881-2, the year he sold out to us, i. e., with only 100 looms. Other testimony of like character from A. T. Dallis (Rec. P. 115-116) and others were introduced by said complainants proving that we had earned large profits.

Now it is significant that throughout this whole procedure before the State Courts, at no time and in no connection *did either I or our counsel ever deny that such large profits had been earned.* On the Contrary we, *conceded the correctness of said charge,* but in doing so, merely claimed credit for the following by way of accounting for said earnings:—

1882-8,—(6 years.)

1. New machinery and Betterments.....	$120,000
2. Dividends paid	54,000
3. Int. Pd. to W. H. Huguley & Co., et. al.....	74,000
4. Losses by fire and floods.....	15,000
5. Losses on cotton transaction, bought as "hedges" by order of directors.....	10,000
6. Bad debt made by W. C. & L. Lanier former Treasurers and "chgd off" (B. B. & Co.)..	10,000
Total Profits, 6 years.....	$283,000
Shows Net Profits per annum.....	$47,166

The above result accomplished on an average of only 140 in looms and outfit, and on cotton, the average cost of which for the six years 9.74. That the above was proven to the entire satisfaction of the special master is shown by his heavy award in favor of my firm. (See Rec. Pages 82 and 86, Vol. 11.)

At the proper time, I am prepared with abundant proof to establish that on the basis mentioned, the actual net earnings of the mill for the period enquired about were as follows:—
Cotton, 9.74. 1882-8-6 years. Average 140 looms

1.	1882-3	$44,000
2.	1883-4	46,000
3.	1884-5	27,000
4.	1885-6	60,000
5.	1886-7	43,500
6.	1887-8	32,858
	Total Earnings	$253,359
	Per annum (net)	$42,222

(In this connection see "Exhibit B," showing profits for quarter ending June 30, '88, $11,210.27.)

Interrogatory 8. In answer to Interrogatory 8th, the records will show the facts. It was my understanding throughout that Col. Hammond had undertaken to represent all three of the defendants of record, myself included and not until his last testimony in this case was I apprised that he never considered himself retained to represent others than the Huguley Manufacturing Company. I regarded all three of the defendants so closely bound by community of interests that I could not conceive how it was possible for one defendant to be successfully represented without proper representation of all. Certainly, I frequently urged upon Col. Hammond additional counsel, especially Judge Chilton, who he knew he had been our regular counsel for years. I further offered to associate with him Judge Hopkins, Capt. Jackson, Messrs. Arnold, Mr. King or any one he might prefer. Invariably he discouraged the tender assuring me throughout and even up to the rendering of the decree of his entire ability to handle the case. Upon one occasion I sent Mr. Alex King to Col. Hammond and offered him a fee of

$1,000 to join Hammond in protecting our interests. After a long interview between them, Mr. King reported to me that Col. Hammond had fully explained the whole case and he (King) said that while perfectly willing to undertake the case, he thought it would be a useless expense on my part, and unnecessary, because he and Hammond were satisfied no default could be established, and that there was nothing in the case. Reassured by this, and relying upon Col. Hammond, I treated the whole procedure as a case of "black mail," afterwards hardly concerning myself enough to attend all the arguments. (I make this full explanation in anticipation of other Interrogatories in the same connection.)

Interrogatory 9. The Alabama & Georgia Manufacturing Company did have interest in said litigation as principal defendant. All its interest in *the plant only*, was sold at the receiver's sale at Hamilton, but this by no means exhausted all the assets of the company. At the time of the sale of this realty, the Receiver of the State Court still held in his possession a large amount of supplies and findings, and also cash and other "Quick Assets," valued at about $20,000, all of which were available to meet the interest on the first Mortgage Bonds in conformity with the express order of the State Court of May 22, 1889, wherein it was specially enjoined on said Receiver to pay promptly "out of any funds of the corporation he may have so long as he remains in office" the interest on said bonds. Suffice it, the receiver is still "in office" and was "in office" on January 1, 1891, and on that date *had ample cash funds with which to have promptly paid the interest had due demand been made upon him.*

Until he shall have been discharged he is still the legal representative of the State Court and charged with certain duties thereunder, and the corporation not defunct. In addition to such interest as the receiver of the Alabama & Georgia Manufacturing Company had not only *directly*

as the most important stockholder, but as trustee of the first Mortgage Bondholders, I had the legal right to protest against said sale. The paramount interest above all was in my firm, W. H. Huguley & Co., who, owning nearly every dollar of the stock, having merely quit claimed their interest in return of 2,000 shares ($200,000) of the Huguley Manufacturing Company Stock, had the best right, in equity, to protest against a fraudulent compromise or sacrifice of their interests at all times, and especially against said illegal sale of Sept. 6th, 1892.

Interrogatory 10. The interest which I and my firm had in the property did not grow out of my contract with the Huguley Manufacturing Company.

As called for, I attach herewith a copy of the contract between D. Jannopoulo and W. H. Huguley & Company, showing that we bought said property through the agency of Chilton, Orrick and Graham, Trustees; that, in buying the property, I borrowed about $9,000 each from D. Jannopoulo and John F. Plummer & Co., of New York; that subsequently, upon the conditions named, we sold to D. Jannopoulo $35,000 of second Mortgage bonds, with part of the proceeds of which we paid our debt and dissolved the trust; That thereupon, in return for 2,000 shares ($200,000) of the capital stock of the Huguley Manufacturing Company, we quit-claimed our interest, as a firm to our said corporation; that while D. Jannopoulo was made nominally President and General Manager, Judge Chilton and I as the Auditing Committee, under the Constitution and By-Laws prepared by us, really represent the entire stock of said corporation except a nominal amount given or sold off to make up a Directory. The contract is marked "Exhibit D."

Interrogatory 11.

Interrogatory 12. My answer to Direct Interrogatory 8th, will suffice for full particulars in connection with the notice.

In acting for my father, as President of the Alabama &

Georgia Manufacturing Company, I was acting under no special power of attorney to give the particular notice, but merely under the general authority or power of attorney, extending over a period of fifteen years, during which time I always acted for him in any and all matters relating to the corporation.

The right of actual ownership, in the manner explained—the fact that the interest of my two concerns, the Huguley M'f'g Co., and W. H. Huguley & Co., were so identical as to be virtually almost one and the same, must be my authority for representing the Huguley M'f'g Co., at the time of giving said notice. However the records or minutes of the Huguley M'f'g Co., covering those meetings in St. Louis in April May and June, 1892, fully show the facts as to my full authority as well as of Judge Chilton to act for the corporation in any and all things in the premises, the nominal President having been disqualified and "dropped out." (See copy of letters, &c. to VanRenssaler, Jannopoulo and Orrick under "Exhibit G.")

Interrogatory 13. Col. Hammond and Mr. Orrick were both present at the sale.

Supplementing all said in my answers to previous questions in the same connection, I will further explain and emphasize that pursuant to the appeal originally filed it was Col. Hammond's purpose and desire to prosecute said appeal. As a condition precedent to doing so, however, he exacted still another heavy fee, which for my part I was not able to raise and Jannopoulo refused to do so for reasons of his own. Hammond was notified and it was my desire as expressed to him that he should continue in the case with Judge Chilton, but conditional on his accepting a contingent fee. He had this option, and I have not pressed him for any final decision, therefore, was not aware that he contemplated withdrawing from the appeal until I went to him just a few moments before the sale and showed the notice to him and

asked him what he thought of it, stating that I had been advised by some of the best lawyers in Atlanta by all means to give said notice. He read it and simply answered "it can not do you any harm," and as I was turning away he called me back and it was then he informed me of his final decision, (as his fee had not been forthcoming), to "drop out of the case." He then remarked "in view of the fact that I am not to go on with the appeal, perhaps you had better tear off my name from the letter-head, as it might mislead the public into thinking that I am retained to continue in the case." Recognizing the good sense in this suggestion, I think I borrowed his knife and cut off the caption. I never asked him to read the notice for me, but had already prepared a brief note to Col. Buck requesting *him* to read the notice for me. I had been told that the latter was the proper person to give the notice. Neither Hammond nor Orrick refused to read the notice because neither was asked by me to do so.

Interrogatory 14. Because I was aware that Col. Hammond's fee could not be met and that he would not probably continue, Judge Chilton being absent, I consulted with other counsel. I did not ask either Hammond or Orrick to read the notice, because of the reason stated, viz.: that I intended to get Buck to read it up to the last minute, when accidentally meeting up with Mr. Frank Arnold, he volunteered to read the notice. No significance whatever can be attached to the circumstances attending said notice. With Col. Hammond it was purely a question of my providing an additional $1,500 fee, which I could not do "merely this and nothing more." Had the fee been forthcoming he would have continued in the case.

Interrogatory 15. As to the "estimated life of cotton machinery" this depends upon many conditions, such as the speed operated, and the quality of work produced.

The popular estimate of the life of machinery in the south running on coarse goods, in the absence of proper

repairs, is about 20 years. All first class mills, however, are accustomed to add 5 and 10 per cent of the original cost of the machinery annually in the way of repairs, with which precaution where the machinery has been originally selected from the best makers, machinery will last a much longer time and do good work. Unless kept in proper repairs it will rapidly depreciate.

As explained in my answer to interrogatory 12th, in the New England States, 8 and 10 per cent is usually charged off for "wear and tear" or "depreciation." In the South, 5 and 8 per cent is allowed, or the equivalent spent in repairs and new machinery.

Interrogatory 16. When I left St. Louis in June, 1892, as testified, Judge Chilton having engaged to prosecute the appeal upon a contingent fee, he introduced a formal resolution reciting the facts with respect to the necessity of taking steps to protect the company in making the supersedeas bond, paying the court costs incident to said litigation, etc., and by unanimous vote of the Board of Directors, I was handed one of the $500 2nd mortgage bonds of the $15,000, in the treasury of the Huguley M'f'g Company for the purpose of defraying, in part said absolute court costs. I negotiated said $500 bond in New York, and have devoted the proceeds as stated. Since this amount has been exhausted, I have been using my own or my firm's resources. As all our attorneys have made contracts based on conditional or contingent fees, payable at the close of the litigation, the $500 provided by the Huguley M'f'g Company have defrayed most of the actual costs. I have not made any further demands upon our corporation or upon D. Jannopoulo since being handed the $500, for reasons of my own.

Interrogatory 17. It is not true that I and my firm alone are carrying on this litigation. Neither is it true that I have the privilege of using others' names on condition that I am to assume all expenses.

I grant that it is quite well understood that D. Jannopoulo, *personally* and in his *individual* capacity solely has refused to contribute one dollar to this litigation. *Officially* however, he is a party to the litigation, as plainly signified by his signature as President of the Huguley M'f'g Co. already of record in these appeal proceedings.

The real parties appear in said record, and in conclusion, I now distinctly state that every dollar of interest of what-kind—whether property, equity of redemption or other resource in and belonging to the Huguley M'f'g Company, the Ala. and Ga. M'f'g Company and W. T. Huguley, as well as of W. H. Huguley & Co. are liable for the expenses of this litigation.

Signed, W. T. HUGULEY,

Answered, sworn to and subscribed before us this 30th day of May, 1894.

H. T. WOODYARD, Commissioner, (L. S.)
E. B. REED, Commissioner, (L. S.)

"*Exhibit A*," *to Interrogatory* 3. *Inventory of Machinery of the Huguley M'f'g Company, January*, 1890.

1. Picker Department.
   - 2 Kitson openers.
   - 1 Kitson lapper.
   - 1 Lord's lapper.
   - 1 Taylor & Lang lapper.
   - Shaftings, Pulleys and hangers complete.
2. Batting Department.
   - 2 Bridesburg batting cards.
   - 1 Howard & Bullough batting card.
   - 1 Pair lap scales.
3. Carding Department.
   - 36 Foss & Peevy cards—36 in.x36 in, under flat.
   - 6 Railway heads.
   - 19 Howard & Bullough cards—50 in.x36 in.

8 John Elce & Co. cards—45 in.x36 in.
8 Bridesburg roller "
2 " batting "

4. Slubbing.

1 Howard & Bullough card.
5 Asa Lee's slubbing frames, 60 splds, each 10 in. lift bobbin, 4 1-2 in.x10 in.
1 Howard & Bullough slubbing frames, 140 splds, each 12 in. lift.
1 Howard & Bullough " " 60 " each 10. in lift.
1 Howard & Bullough " " 50 " each 6 in.x10 in.

310 spindles

5. Drawing.

6 Bridesburg drawing frames 4 deliveries each.
2 " " " 4 " "
2 Howard & Bullough drawing frames, 5 deliveries each.
2 Jno. Elce & Co. drawing frames, 5 deliveries each.
6 Howard & Bullough drawing frames, 6 deliveries each.

Total 14 - - - - - - - - - 24

7 Railway heads.
Shafting, pulleys and hangers complete.

6. Speeders.

1 Howard & Bullough speeder, 120 splds, 4 in.x8 in. bobbin.
1 Howard & Bullough speeder, 120 splds, 3 1-2 in.x7 in. bobbin.
1 Howard & Bullough speeder, 144 splds, 3 1-2 in.x7 in. bobbin.

Total 3 - - - - - - - 384

Shafting, pulleys and hangers complete.

7. Spinning Department.

13 Bridesburgh frames, 2 3-4 in. gauge, 3,488 spindles.
9 Jenks " 3 " " 1,836 "
9 English " 2 3-4 " " 1,632 "
1 Payne & Mathewson spooler, 74 "
1 Bridesburg " 80 "
1 Howard & Bullough " 200 "
Total - - - - - - 7,310 "
4 Howard & Bullough warpers.
4 Spooler creels.
1 Hardy flat grinding machine, 2 rollers and 3 slats.
1 " grinder, 4 rollers.
5 " " for grinding cylinder and doffers.
1 Roving reel.
1 Pair roving scalers.
Shaftings, pulleys and hangers complete.

8. Slasher Department.
2 Howard & Bullough slashers.
26 Slasher beams.
2 Sizing kettles.
1 Yard reel.
1 Band machine.
1 Pair roping scales.

9. Weaving Department.
28 Bridesburg looms, 36 inches.
48 English " 36 "
48 Woods " 36 "
40 Bridesburg " 36 "
12 Lowell " 36 "
16 " " 36 "
8 Bridesburg " 40 "
1 King & Burleigh 3-4
2 " " 7-8
203
3 8-day clocks
Shaftings, pulleys and hangers complete.

Cloth Department.

2 Cloth inspectors.
1 Finishing machine.
1 Brusher.
1 Shearer.
1 Folder.
1 New cloth press.
1 Sheeting "
1 Pair scales.
1 " trucks.
1 Set of roller covering machines.
1 Equipment of stencils, brands, etc.
Shaftings, pulleys, hangers, etc.

Machine Shop, Etc.

1 Lathe, 16 inches, swing, 9 feet long.
1 Emery wheel.
1 Circular saw.
1 Vise.
1 Pipe clamp.
1 Grindstone.
1 Blacksmith shop set of tools, bellows, anvil, etc., etc.

Sundry.

1 Elevator.
1 Boiler, 60 horse power.
2 56 inch Leffel wheels (water).
1 74 " " " "
1 Rotary pump and pipes, etc., (fire).
1 Deam steam fire pump.
1 Water tank—1,000 gallons capacity.
Complete equipment of Hill's automatic sprinklers, with fire hose, fire buckets, etc. etc.

Driving.

1 Driving shaft. 2 Drivers.
8 Gear crown wheels, crown pinion.

50 feet main shafting 6 inches diameter.
300 " " " 3 " "
5 Large drivers.
85 Medium "
30 Counter shafts.
300 " "
5 Large hangers, main line.
175 Medium " 18 inches drop.
1 Main driving belt (new).
All other driving belts, etc., etc.

ST. LOUIS, MO., May 26th, 1892.

C. S. Van Rensselaer, attorney, American Surety Company, New York,

My Dear Sir:—Having been summoned here by Mr. Jannopoulo, my time since I have seen you, has been taken up in auditing business of our corporation, which is not yet finished. As president of the Huguley Manufacturing Company, Mr. Jannopoulo, on my suggestion and prompted by the advice of myself and counsel Judge Chilton of Alabama who had been here with me for the past week, has directed Messrs. N. J. & T. A. Hammond (being counsel for the Huguley Manufacturing Company) to give notice of appeal the moment the decree is rendered by Judge Newman and with further instructions with Mr. Thad Hammond, your agent and attorney, to go about making necessary bonds. In response, Hammond still writes Col. Orrick local attorney for the corporation, expressing the same doubts as to whether the court will accept a bond made by your corporation, but state, that no decree as yet has been rendered. On Hammond's advice and the advice of Orrick and Chilton, I have directed Judge Chilton to act in behalf of my father, as president of the Alabama & Georgia Manufacturing Company and my behalf as trustee of first mortgage bonds and join with Hammond, attorney for the Huguley Manufacturing Company in making concurrent appeal.

Col. Orrick suggests that if the court refuses to accept such bond, as you have kindly undertaken to make that we have some individual to make said bond and you indemnify said individual or individuals.

Judge Chilton left last night for the south and will join me early next week with necessary abstract of titles, the only condition stipulated by the Trust Company. Judge Chilton by the appointment of his brother-in-law Col. Thorington to the supreme bench of Alabama has fallen heir to an immense business and possibly may not be able to go to Baltimore and New York in my interest, in which event I may want you to act for us. Kindly advise me here by return mail whether you could leave New York early next week. It would hardly consume more than a day of your time, as the Trust Company simply desires to know that the title is absolute in the Huguley Manufacturing Company. Of this there is no question. This done and I command all money necessary to carry out my present plans. After Monday kindly address me care of Steel, Semmes & Cary National Bank, Baltimore Building, Baltimore, Maryland.

As to compensation for your valuable services at this juncture I think I will not err in deferring to your spirit of fairness with which I have been impressed.

Yours respectfully,

W. T. HUGULEY.

"Exhibit G," to Interrogatory 14.

ATLANTA, GA., July 21, 1892.

W. T. Huguley, Esq., West Point, Ga.

DEAR SIR:—The decree in the case of Robinson Trustee vs. the Alabama & Georgia M'f'g Co., et. al. was made on the 30th day of May, 1892. In order to stop the sale of the property, we must have the bond required by law filed and approved in the Clerk's office within sixty days from that date, say on or before the 29th day of this month. We may

have to communicate with Judge Newman, who is at Keswick, Albemarle county, Virginia. Therefore there is no time to be lost.

The bond must be in the sum of $10,000, conditioned to pay the costs and damages which the plaintiff may sustain by reason of the appeal. The strong probabilities are that the security would never have anything to pay, because we suppose that in any event the mill will pay the first mortgage bonds, if we should fail to reverse the decision. You must get some man in Georgia to stand the security, who can swear that he is worth $10,000, over and above the legal exemptions in this State.

Unless you act promptly, you will lose the opportunity of stopping the sale.

Yours truly,

N. J. & T. A. HAMMOND.

Exhibit G.

Know all men, by these presents, That we, ... as principal and ..... as security are held and firmly bound to J. J. Robinson, Trustee et al. in the just and full sum of ten thousand dollars, to be paid the said J. J. Robinson, et al. his and their certain attorneys, executors, administrators or assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this day of August one thousand eight hundred and ninety two subject to the following conditions, to wit:

Whereas, lately trial in the Circuit Court of the United States for the Northern District of Georgia, March Term 1891 in the case of J. J. Robinson, Trustee versus The Alabama & Georgia Manufacturing Company, et al, being No. 360. In equity a decree was rendered in said court by

His Honor Judge Newman, Judge of the District Court of the United States for the Northern District of Georgia in favor of the plaintiff vs. the defendant for the sum of..... .....dollars and the said defendant desiring to enter an appeal from said decision to the Circuit Court of Appeals of the United States to be holden at New Orleans on the third Monday in November, 1892. Now the condition of the above obligation is such that if the said..... .....as principal and the said..... .....as security shall prosecute said appeal to effect and all damages and costs in said case if they fail to make the said appeal good and reverse the said decree, then the above to be void; else to remain in full force and virtue. Sealed and delivered in the presence of,.....

ATLANTA, August 26, 1892.

Mr. W. T. Huguley, West Point, Ga.

DEAR SIR:—The American Surety Company of New York has fully complied with the laws of Georgia has paid all taxes and licenses, has authority to do business in this State. Yours truly,

WM. A. WRIGHT,

Comp. Genl & Ins. Comr.

ATLANTA, GA., July 28th, 1892.

John C. Orrick, Esq., St. Louis, Mo.

DEAR SIR:—I beg to call your careful attention to my several letters written to both you and Mr. Jannopoulo from here this week, particularly to letters addressed by Col. Hammond and myself yesterday and to-day. My letter this p. m., to Mr. Jannopoulo is fully explanatory and I have requested him to lay it before you without fail. Judge Newman will be here a day or two longer and it is all important that the bond be fully made and approved before he leaves for Virginia. You will know how to go about it at your end.

I can not stress further the vast importance of speedy action in the premises. Too much is involved to all parties at interest for us now to hesitate for a moment. After all, the making of the bond is a mere evasion of a technical ruling which can not stand on a fair hearing. Even should the ultimate decision prove adverse to us, it can not be rendered before late in December and the property could not be offered for sale before February or March, '93, by which time, apart from all the time thus allotted to us for funding the bonds or other financial recourses open to us, possible within a period of seven or eight months, with good luck I estimate that the mill itself can "work out its own salvation."

I appeal to you now to guide Mr. Jannopoulo and instruct us here without a moment's delay.

Yours respectfully,

D. Jannopoulo, Esq., St. Louis, Mo.

DEAR SIR:—I wrote from here last p. m., full report of the status of things at this end, and since your letter of 28th July has reached me from West Point.

I shall do my best of course within the next few days to make that appeal bond, but both Col. Hammond and I have already stressed the obstacles in my way here. Even the American Surety Company on whom I have relied, in so many words expressed their surprise why such a small bond could not be easily made by us; and yet when you consider the poverty of the people, the general aversions to making endorsements, partnership agreements, lawyers not permitted to make bonds for clients, and above all the general cloud which has been placed by the ruling of the court charging at your door the entire responsibility, you can well understand and appreciate how I am handicapped.

The Surety Company only yesterday wired their willingness to make bond if they themselves were indemnified by "absolute collateral." Exactly what this means, I have

written to find out, tendering mortgage on everything we have to secure them. By to-morrow I expect to have their reply, and will report to you promptly.

If unfavorable we must insist that you take immediate steps to make the bond. We are all agreed that if you are inclined to do so, the bond can be easily made, and it hardly necessary for us to employ more positive terms than to say that you *must* make it.

The certificate check asked for will solve the problem. Wire advice that is en route.

Yours faithfully,

Atlanta, Ga., July 28th 1892.

D. Jannopoulo, Esqr., Prest., St. Louis, Mo.

DEAR SIR:—I am again disappointed in reporting that one of my friends on whom I had relied to make the bond for appeal, has not yet consented to do so. He is a prominent real estate man and banker and is inclined to oblige me but thinks that you might arrange in St. Louis to forward here a certified check for the $10,000.00 to be held by him or some other banker by way of indemnity for lending his name as bondsman. I had him and Col. Hammond to confer at length this a. m. and Col. Hammond gave him every assurance, from his standpoint as our lawyer, that there was not the smallest degree of risk attaching to making the bond. Nevertheless the result was as above stated. Col. Hammond and I after exerting our best effort judiciously i. e. without "hawking about" our business have finally concluded that you had better not count on anything at this end but proceed to hedge against the matter in question in such manner as you and Col. Orrick may deem best. After all, it is only an evasion of a technicality of Georgia law, the statute not admitting a bond to be made as proposed by the American Surety Co. It must be done by a resident of this State. Therefore, should you arrange through our bank in

St. Louis or some other medium to have that bond made, for our part we may say to you that you have our full consent and authority not to only pay the American Trust Co. the trifling compensation which may be charged by the Surety Co. for indemnifying the bondsman or the maker of the bond but you can apply all or any part of the treasury stock and bonds by way of further indemnity.

Col. Hammond is writing you by same mail. Both he and I wrote you fully last p. m. You will receive our letters early tomorrow morning, and we both are exceedingly anxious to have something tangible on which to predicate a conclusion of this vexatious matter before Judge Newman leaves the city, which he says may be to-morrow night. Col. Hammond had an extended interview with Judge Newman to-day and has laid before him all necessary documents looking to appeal merely adding that the bondsman would be named later.

Our matter is being watched with interest here and the bond having been reduced to such a comparatively small sum that it will be a great reflection and a thing inexplicable if this bond be not promptly made. Of course only you and our immediate attorneys know what immense issues are at stake so far as you and I are concerned—so great indeed that it is entirely out of the question for me to abandon the idea that even I, handicapped as I am, can not myself manage the matter at this end. One thing certain, by either one or the other that bond *must be made.*

You will of course explain to the bank, that they will be indemnified if necessary, by the American Surety Co., and that if they issue the suggested certificate of deposit it will not be used but merely held subject to the final decree of the court in December. The interest, if any charged, can hardly exceed $200.00 as the case will come up for a hearing sometime in December.

An additional reason for making the appeal is the almost

certain fact that within the time our entire issue of bonds can be funded and the settlement between you and my firm can thus be brought in the line marked out. Two stock and bond brokers propose to make a trip immediately on this mission. Show this without fail to Col. Orrick.

"*Exhibit G.*"

ATLANTA, GA., August 1st, 1892.

Messrs. D. Jannopoulo, president, and John C. Orrick, attorney, St. Louis, Mo.

GENTLEMEN: — Referring to my respects of last night from West Point on my arrival here I find copy of letter from Col. Hammond herein enclosed, which crossed me en-route.

The American Surety Company people have drawn it a little too strongly when they touch upon the matter of collateral. The trouble is Mr. Van Rensaeller was the official with whom I made my contract and to whom I made necessary explanations, etc. He expressed himself entirely satisfied and not only gave me a written contract promising to make the bond for $350, but likewise gave me an affidavit certifying that the American Surety Company was worth $1,500,000, over and above all liabilities, same to be exhibited in court. He did casually inquire what class of collateral I could give, and I explained to him in a general way that the Huguley Manufacturing Company had the $700,000 and $15,000 Treasury and Stock and Bonds, all or any part of which might be utilized. On Saturday last I further wrote them offering to give them in addition a first lien or mortgage on everything W. H. Huguley & Company own, exhibiting statements.

The trouble is Mr. Van Rensaeller is in Europe and Mr. Benedict is the attorney, who took up where Mr. Van Rensaeller left off. I am satisfied that my proposition will meet with favor, and I expect to hear by to-morrow or the next day (at the outside).

My plans as laid last week were for the Surety Company to indemnify the individual and on this assurance my friends in Georgia had agreed and still agree to make the bond. Now pending answer as to whether the Security Company will accept the collateral tendered. I mean to put out my very best effort to get some local friend to make the bond regardless of the American Surety Company, the Treasury bonds and stock being virtually "gilt edge" with note of the corporation and same endorsed by my firm W. H. Huguley & Company. I will hear from New York to-morrow—possibly from you.

While sanguine as to the final outcome, I must again urge upon you to be in readiness for our last resort and provide Hammond at the very last moment or earlier, with that certified check, previously canvassed between us. This must be done without fail by August 6th, 1892.

It can hardly cost to get necessary bond for mill more than $150 and $200. This is the cheapest and most dignified thing to do. I will remain here until I hear from you by wire. Telegraph fully and promptly care Hammond.

Yours respectfully,

W. T. HUGULEY.

Copy. ATLANTA, GA., Aug. 1, 1892.

W. T. Huguley, Esq., West Point, Ga.

DEAR SIR:—Enclosed find two letters, one from Jannoppoulo, and one from Wheelwright Eldridge & Co., of New York, both of which we opened and read as you requested. They give you no aid on the subject of the Suretyship.

The same mail brought us a letter from the American Surety Co., in which they say that, while you were in their office in New York, they informed you that they "would consent to execute such a bond only, provided they were absolutely indemnified by the deposit of tangible, negotiable or marketable collateral security, but we utterly fail to obtain from Mr. Huguley as to what, if any, security he could give us."

* * * We are free to say, however, that from our interview with Mr. Huguley, we did not believe he is in position to offer us any collateral, which would be satisfactory. And further, in as much as the bond to be given appears now to be a bond of indemnity to personal sureties, we presume that if he were in position to give such satisfactory collateral, it would be easier for him to secure his bondsmen directly with the same collateral."

This seems to be quite a plain declination on the part of that company to deal further in the matter. Indeed, we have no time now to make a bond through them.

We will delay the mailing of this letter this morning, thinking that perhaps you may come to the city."

Yours,

(Copy) N. J. & T. A. HAMMOND.

Referred to Messrs. Jannopoulo and Orrick.

"Exhibit G."

ATLANTA, GA., Aug. 25, 1892.

American Surety Company, New York, N. Y.

Appeal bond ten thousand declined, grounds non-residents. Have written contract with Mr. Van Rensaller to make bond. Answer.

(Collect.) W. T. HUGULEY.

(Copy of Telegram.)

114 90 189

Dated NEW YORK 29

To W. G. Huguley, Atlanta.

Mr. Jannopoulo has left the city.

T. T. LAMAYLINS.

"Exhibit G."

Night Message. The Western Union Telegraph Company.

7 29 1892

Reed at 11 P Atlanta

Dated ST. LOUIS, MO., 29.

To W. T. Huguley or N. J. & T. A. Hammond.

Replying yours twenty-seventh, see letters of yesterday to you and Hammonds.

D. JANNOPOULO Prest.

Postal Telegraph Cable Company.
Received at Main Office 11 E Ala St Atlanta Ga
14 a Cg Bp 6 paid 9:45 a

CHARLESTON, S. C., Aug. 23, '92

W. T. Huguley.

We decline going on the bond.

MANDO PHOSPHATE CO.

The Western Union Telegraph Company.

11.56 a ATLANTA, GA., Aug. 26, 189
Dated ST. LOUIS, MO., 26.

To W. T. Huguley, Esq.,
Care of N. J. & T. A. Hammond,
City.

Replying your letter twenty second I have written Hammonds fully

D. JANNOPOULO.

The Western Union Telegraph Company.

144 N ATLANTA, Aug. 8, 1892.
Dated ST. LOUIS, MO., 8.

To W. T. Huguley,
Care N. J. & T. A. Hammond,
Atlanta.

Refer you to my letter of second inst; that is all I can do

D JANNOPOULO
Prest

ATLANTA, GA., July 27th, 1892.

Mr. Samuel W. Goode, Offic.

MY DEAR SIR—:—Referring to your interview of this a. m., I beg to submit to you herewith the following proposition:—

1st. As to making Bond for $10,000.

This has reference to a certain action brought before Judge Newman in the United States Circuit Court of the Northern District of Georgia, by J. J. Robinson, Trustee et al. Plaintiff vs. The Alabama & Georgia M'f'g Co., et al.

defendants. The Court rendered a decree on the 30th May, 1892, and fixed the amount of the appeal bond at not exceeding $10,000.

The nature of this suit and the causes leading up to the same have been already discussed between us and for further particulars and information we refer you to our attorneys Messrs. N. J. & T. A. Hammond, who will join me in the positive assurance that there can be no possible chance of incurring any loss whatever in making said bond for $10,000.

(I). Because the American Surety Co. of New York has proposed to make said bond directly and in any amount. On announcement of this, the Court ruled that a bond of not exceeding $10,000 should be given. Thereupon, the opposing counsel raised the point that the Georgia statute would not allow a bond made by a non-resident. To get around this statute, it has been decided to get some friend or friends to make the bond and concurrently with doing so, the American Surety Co. has engaged to indemnify such friend or friends against any and all expense or liability attaching thereto.

(II). In addition to this guarantee or indemnity against any sort of loss, we, (W. H. Huguley & Co.) will cheerfully furnish ample other collateral to be held by you until this case shall have been finally settled.

(III). That there can be not the remotest degree of risk is evidenced (1) that as late as January, 1890, this property, formerly known as the Alabama & Georgia M'f'g Co. was knocked down to us at receiver's sale at about $175,000 cash basis, and that too, when money was scarce and rates high. The original cost to date (realty and machinery) has been $347,000. (2) The main building alone is insured at lowest standard rates in best companies for $200,000. The other real estate, consisting of picker house, warehouse, superintendent's house, stores, operative houses, etc., are estimated to be worth about $75,000 more. (3) Upon re-

organization under the style of the Huguley Manufacturing Company, there was wiped out a disbursement account in shape of dividends, interest to W. H. H. & Co., bankers and others, improvements, etc., etc., aggregating $31,000 per annum. Thus it remains that only the $65,000 first mortgage bonds alone now "cut any figure." (4) The earning capacity is large—having been about $25,000 for quarter ending March 31st, '92. (5) In proof of all the above we append accompanying statement showing condition of mill, profit and loss, list of insurance now in force, etc., etc.

As explained to you in person, it is desired (1) through the agency of your good self to make the bond mentioned and as compensation for so doing we will engage to pay you .....dollars.

(2) It is furthermore desired at the earliest moment practicable to fund, if possible, the entire issue of first and second mortgage bonds now out, viz., $65,000 first mortgage bonds Alabama and Georgia Manufacturing Co., and $35,000 first mortgage bonds, Huguley Manufacturing Co.

The former issue is 5-20s, the latter issue 1-14s, both maturing in 1904. The rate of interest now 8 per cent, payable semi-annually.

As to the rate of the new issue contemplated, I would explain that existing contract obligates a certain party to subscribe to $35,000 on a basis of 6 per cent and we can control, if necessary, $20,000 or $25,000, thus leaving for you to place say about $50,000 more. In other words, we can start the subscription with say $50,000 on basis of six per cent. This being the case, if any concession be found necessary, it would perhaps be wiser to make it in the price at which you may offer your $50,000.

As further explained to you, our purpose is funding these bonds is not so much a saving of interest as of large commissions, etc., being now paid, which I estimate at $25,000 to $30,000 per annum.

For placing $50,000 or more of the proposed issue of bonds, we will engage to pay you——per cent or say—— dollars.

Kindly signify your acquiescence by signing with us in duplicate this paper, which I trust will cover the substance of our conversation.

Yours faithfully,

"Exhibit H," to Intg. 12.

The Property of the Huguley M'f'g. Co.

$ 40,000 On their four-story, metal-roof brick factory building, including pipes and piping therein; known as the "Huguley Manufacturing Co.'s Cotton Mills;" operated by water power, on the Chattahoochee river, about seven miles below West Point, Georgia.

$140,000 On their fixed and movable machines, machinery and apparatus, water wheels, pumps and all machinery attached thereto, shafting, pulleys, hangers, belting, tools, furniture, fixtures and all implements and utensils in their business, or for ordinary repairs, contained therein, or which may be added.

$ 10,000 On their stock, manufactured or unmanufactured, and in process of manufacture, together with all supplies and findings contained therein.

$ 5,000 On their three-story stone metal roof picker house, including their pipes and piping therein located eighteen feet on the south of the main building.

$ 2,000 On their fixed and movable machines, machinery and apparatus, water wheels, pumps, and all machinery attached thereto, shafting, pulleys, hangers, belting, tools furniture, fixtures and all implements and utensils in their business, or for ordinary repairs, contained therein, or which may be added.

$ 3,000 On their stock, manufactured or unmanufactured, and in process of manufacture, together with all supplies and findings contained therein.

$200,000.

$200,000 total insurance permitted.

Permission granted to run until nine o'clock at night, to set up and adjust machinery and to make all ordinary repairs.

To attach to and be made part of Policy No..... of the.....Insurance Company of..... which covers pro rata on each of the above items to the amount of.....Dollars.

.....Agents

Printed form referred to in the within testimony.

E. R. AUSTIN Com'r.

To D. Jannopoulo, President:

Below find record of policies as renewed and in existence July 22 1891, on Huguley Manufacturing Company, near West Point, Ga., with loss payable favor: First mortgage bondholders trustees, J. J. Robinson, W. C. Yancy and W. T. Huguley.

London and Lancashire	1842332	Feb.	5,92.	$12,500
Liverpool London and G	2773	"	17,"	25,000
Scottish Union & Nat'l	1537977	"	17,"	5,000
Scottish Union & Nat'l	1537991	Mar.	19, 92,	5,000
Commercial Union Assur. Co	102465	"	27, 92,	12,500
London Assurance Corporation	1207613	June	25, 92,	5,000
				$65,000—$65,000

With loss payable favor St. Louis Trust Co., trustees for bondholders.

Commonwealth Union Assur. Co	102516	July	8, 92,	$25,000
Orient Insurance Company	1245	"	8, "	15,900
Rome Fire Insurance Co	25014	"	8, "	7,500
Merchants of Newark, N. J.	698617	"	10, "	2,500
				$50,000—$50,000

Without any loss payable clause.

Commonwealth of N Y.	11022	Aug.	25, 92.	$ 5,000
Union Assur. Asso. of London	919636	"	25, "	5,000
Scottish Union & National	1543216	Mch.	24, "	10,000
Scottish Union & National	1543238	May	26, "	10,000
Norwich Union	1956424	July	25, "	10,000
American of Philadelphia	3299	"	15, "	15,000
Merchants of Newark, N. J.	728579	"	12, "	5,000
Phœnix of London	3242706	"	22, "	10,000
Royal Ins. Co., of Liverpool	4367619	"	15 "	15,000
				$85,000—$85,000
				$200,000

"Exhibit H."

Testimony of Torbett.

Bill to foreclose mortgage. In the United States Circuit Court for the Northern District of Georgia.

J. J. ROBINSON, TRUSTEE,
versus
ALABAMA & GEORGIA M'F'G CO., ET AL.

Bill to foreclose mortgage. In the United States Circuit Court for the Northern District of Georgia.

We consent that the testimony of Mr. M. B. Torbett of Atlanta, Ga., may be taken without a commission by Mr. E. R. Austin as sole commissioner, and sworn to before any notary pubic, and so used as evidence, subject to legal objections as to relevancy.

ABBOTT & SMITH, solicitors for Plaintiff.
N. J. & T. A. Hammond, for Defendant.

Mr. Torbett being examined answers as follows:

(By Mr. Hammond.) Q. What is your business, and how long have you been engaged in it?

A. My business is insurance. I have been in it about five years.

Q. If you have ever insured the property once owned by the Alabama & Georgia Manufacturing Company, and now occupied by the Huguley Manufacturing Company, below West Point, Georgia, state in what companies you insured it, and in what amounts and how?

A. I insured the property as shown by the paper hereto attached. I insured the Alabama & Georgia Manufacturing Company, previous to its being called the Huguley Manufacturing Company, in the name of H. C. Fisher, receiver, and then after H. C. Fisher sold the property I became acquainted with Jannopoulo and Orrick and Graham through him. And after that I solicited the insurance, and they gave it to me.

Q. At that time what insurance had you on it?

A. 37,500, in two policies. Those were written through

the Atlanta Home office, and the policies at that time were at the Lowry Banking Company.

Q. To whom was the insurance payable?

A. To Robinson, Yancey and Huguley.

Q. Is that insurance payable, to the different persons and to the different amounts there stated, in a mere arbitrary thing, or was it fixed by inspection?

A. When it was turned over to me, I went there, went over the mill, and made a thorough inspection.

Q. What proportion is there between the value of the property and the $200,000 of aggregate insurance represented on said list?

A. I thought it worth more than $200,000, or else I would not have taken the risk.

Q. What was and is the usual proportion between actual and insurable value?

A. On manufacturing property like this we always have actual value at least 15 per cent. or 20 per cent. larger than the insurable. I visit the mill at least twice a year for inspection.

Q. Do you know whether in that time the property has increased or decreased in value?

A. I do not think it has decreased, *for they seem to be making improvements.*

"Exhibit B."

Balance sheet showing condition of Ala. & Ga. Mills, quarter ending June 30-88.

Stock issued to date		$156,000.00
5—20 Bonds, due in 1904		65,000.00
J. J. Robinson	$1,000	
J. G. Andrews	3,500	
Mrs. Doss	500	
C. C. Jones	3,263.70	8,263.70
For cotton:		
Bank of La Fayette, Ala	$5,970.30	
R. W. Allen	1,834.40	

Cotton reed to be priced and unsettled	551.61	8,356.31
Atlanta Nat. Bank		15,000.00
George W. Wicks & Co.	5,000	
Less	3,206	1,794.00
W. H. H. & Co. notes & int.	80,500	
Add note	3,000	83,500.00
Bridesburg M'f'g Co.		2,200.00
Net surplus on hand		72,894.46
		$413,008.52

Profit and Loss.

Net surplus quarter ending March 31, '88	$61,684.24
By net profits for the quarter	11,210.27
	$72,894.51

"Exhibit B."

Balance sheet showing condition of Ala. & Ga Mills quarter ending June 30-88.

Resources.

Fixed investment to date	$320,084.74	
Added this quarter	916.60	$321,801.34
357—176, 759 at 9 3-4	$17,236.91	
31	1,300.00	
Cotton as per sheet, 30	1,000.00	$19,536.91
Goods in warehouse as per stock book		$6,985.00
Goods and stock at mill as per supt's report		12,434.91
Bills receivable as per sheet		36,302.42

Sundries.

Unexpired ins. and taxes	3,000.00
Rent	200.00
Office fixtures, stationery, etc.	400.00

Bagging, etc.....	600.00	
Cl. and G. C. Ry.....	200.00	
Cl. and G. W. Ry.....	100.00	
Perkins	100.00	
In suspense Lehman Bros.....	4,000.00	$8,600.00
		$405,660.58
Balance in Treasury		7,347.94
		$413,008.52

Profit and Loss, June 30, '88, $72,804.46.
Net surplus, quarter ending June 30, '88.....$72,894.51

"Exhibit C."

The following is an exhibit of the production of the Ala. & Ga. Mfg Co. for the year ending June 30, 1888, as shown by the Superintendent's and Treasurer's books. Prices extended being on an average of prices realized for what goods were sold.

7 oz. Duck	643,369a7½	$ 48.252 67	
8 " "	1,361,632a8¼	112.334 64	
10" "	876,964a9¾	85,509 73	
Sheetings.	10,540a5½	579 70	
Bats,	839,464a6½	5,456 24	
Waste sold & on hand		4,000 00	
Bagging, - - - - -		1,499 94	
Sundries, - - -		1.602 30	
Remnants, - - -		2,881 93	
		$262,117 15	

Pd for cotton at 10c.	$ 176,454 59
Supplies, - - - -	8.984 11
Inc. and Taxes - -	1,365 27
" and Salaries, -	4,087 67
Pay Rolls, - - - -	31,963 40
Freights, - - - -	2,266 36
Repairs, - - - -	620 45
Insurance, - - -	1.760 98
Hauling, - - - -	1,755 70
Profits, - - - -	32.858 52
	$262.117 15

Profits for twelve months ending June 30, 1888, $32,858.52.

"Exhibit D."

Agreement between W. H. Huguley & Company, of West Point, Georgia, and D. Jannopoulo, of St. Louis, Missouri.

WHEREAS, W. H. Huguley & Co., a firm composed of W. H. Huguley, W. T. Huguley and J. H. Nolan, and others, were lately the owners of the property of the Alabama & Georgia Manufacturing Co., located near West Point, in the State of Georgia, and

WHEREAS, the said property was sold at public sale by H C. Fisher, Receiver, on the seventh day of January, 1890, at the town of Hamilton, Georgia, to satisfy certain liabilities of the said Alabama & Georgia Manufacturing Company and

WHEREAS, at the sale the property was purchased by John C. Orrick, Malcolm Graham and J. M. Chilton, as trustees, to be held and disposed of by them, upon the terms and conditions fully set forth in a certain agreement dated the ninth day of January, 1890, which agreement is duly executed by said Orrick, Graham and Chilton, and the said W. H. Huguley & Co., by which agreement upon the payment of certain sums of money, at the time and manner stated in said agreement, by said Huguley & Company, the said trustees are to convey the said property to said W. H Huguley & Company, or to such corporation as they may require, as in said agreement provided, and

WHEREAS, The said W. H. Huguley & Co. desire the aid of D. Jannopoulo, of the city of St. Louis, State of Missouri in an effort to re-establish the said property of the company lately known as the Alabama & Georgia Manufacturing Company, and make it a going concern, and

WHEREAS, The said W. H. Huguley & Company have caused to be organized a corporation known as the Huguley Manufacturing Company of Georgia, having a capital stock of two hundred thousand dollars ($200,000), with the view of having the said trustees to convey the same to said corporation, and desire that such arrangement may be made as that the said trustees will convey the said property to said corporation, above named, and

WHEREAS, To accomplish the purchase of said mill property, etc., and for other purposes, certain contracts were signed in duplicate between W. H. Huguley & Company of West Point, Georgia, and John F. Plummer Company of New York, under date of December 16th, 1889, and in

triplicate between W. H. Huguley & Company and John F. Plummer & Company and D. Jannopoulo, and associates, under date of December 18th, 1889 the terms and conditions of which are duly and fully set forth and defined, and

WHEREAS, In conformity with said contracts, certain advances were made to W. H. Huguley by said John F. Plummer & Company, say, cash $9,000, and endorsement in shape of a note for $8,000, drawn by W. T. Huguley in favor of John F. Plummer & Company, and by them endorsed to the Atlanta National Bank, and

WHEREAS, Certain cash advances were made by D. Jannopoulo to W. H. Huguley & Company of nine thousand two hundred ($9,200) dollars.....and

WHEREAS, The advances so made under the trustees agreement were made subject to said contracts signed between the parties in interest under date of December 16th and 18th, 1889, respectively, and

WHEREAS, The firm of John F. Plummer & Company did, on the..... day of ....., 1890, make an assignment and are not able to carry out their said contract, thus necessitating a new arrangement on the part of W. H. Huguley & Company, and

WHEREAS, The said contracts as to said Jannopoulo are hereby by mutual consent, cancelled and annulled, and

Whereas, Said Jannopoulo is desirous of acquiring the general sales agency for said mills throughout the United States, and also to become the president and general manager of the mill property, and

WHEREAS, it is to the interest of all parties concerned to make the mill, without unnecessary delay, a going concern, and

WHEREAS, to this end, the aid and co-operation of said Jannopoulo has been invoked by said W. H. Huguley & Company.

Now, therefore, it is hereby agreed by and between W.

H. Huguley, W. T. Huguley and J. H. Nolan, partners as W. H. Huguley & Company of the one part and D. Jannopoulo, of the other part, as follows, to-wit:—

The said Jannopoulo, in consideration of the covenants, terms and conditions here in after set forth, will endeavor to re-establish the business of said property lately of the Alabama & Georgia Manufacturing Company, upon the following terms and conditions, and not otherwise.

First. Said W. H. Huguley & Company are to make, without delay, a transfer, in due form, of all their rights, title and interest in and to the said property, lately known as the Alabama & Georgia Manufacturing Company, to the Huguley Manufacturing Company, a corporation of the State of Georgia, in consideration of $200,000 of paid up stock of said corporation.

Second. Fifty-one per cent of the authorized capital stock of said Huguley Manufacturing Company of Georgia shall immediately upon the transfer aforesaid, be duly transferred by said Huguley & Company to John C. Orrick, as Trustee, to be held by him as such Trustee for the period of five (5) years from the date hereof unless at the expiration of three (3) years from the date hereof the parties who transferred said fifty-one per cent of stock to said Orrick, Trustee, or their assigns, shall in writing, request the said Jannopoulo to resign as such President and Manager, and in case of such request the said Jannopoulo thereupon hereby agrees to so resign provided and as soon thereafter as he may be relieved, by said parties or assigns, by sale, at cost, of any bonds or securities of said Company, then held by him, and is also duly relieved from any and all obligations he may be under as endorser, guarantor or surety upon any paper or other obligation of said Company, and it is understood the said Jannopoulo shall not be required to resign as aforesaid after the period aforesaid so long as he may hold any securities, notes or obligations of said Company, or is

bound in any manner therefor. Said Jannopoulo shall have the right after the first year to resign as president and manager of said company, as he may elect.

Third. The said fifty-one per cent of said stock shall be voted at any and all meetings of the stockholders of said company, in manner and for persons as the said Jannopoulo may in writing, request, pending the said trust. It being understood, however, that the said firm of Huguley & Company, or their assigns, have the right to a representation of two out of five directors or in same proportion in said board, for whom the said Trustee, at any meeting of the stockholders, for the election of directors, shall vote.

Fourth. It is further agreed that said Jannopoulo is to be vested with the control and management of the property so long as, by the terms of this agreement, he is entitled to the same.

Fifth. The present officers and directors of said Huguley Manufacturing Company of Georgia are to resign at once and the following persons are to be elected in their places: D. Jannopoulo, C. W. Martin, Martin S. Tirmenstein, W. T. Huguley and J. M. Chilton.

Sixth. D. Jannopoulo, or such other person or corporation as the said Jannopoulo may designate, *shall be the agent for the disposal and sale, of the whole output of the mills* lately known as the said Alabama & Georgia Manufacturing Company and such agent shall receive for his services a commission of five (5) per cent of all such sales, to be deducted from the amount of the proceeds of such sales, when made. Payment on all sales guaranteed. And such agency shall continue on such terms so long as said Jannopoulo remains as president and manager of the said Huguley Manufacturing Company, under the terms of this agreement.

Seventh. *Full and detailed statements of the condition and earnings, expenses, etc., of the business of the mills, are to be*

made up and reported quarterly to the Board of Directors, or to a committee appointed to receive the same. Said Board or Committee to meet every three months, on the following dates, or as soon thereafter as practicable at the office of the Company in St. Louis, Missouri, as follows: On the first Tuesdays of July, October, January and April, of each year at 10 *o'clock a. m.*

An annual meeting of the stockholders will be held at the office of the mill in the State of Georgia, on the third (3rd) Tuesday of January, in each year, at 10 *o'clock a. m. At such meeting a complete report of the condition of the mill, for the year last past is to be made.* Sixty per cent (60) of all dividends earned on stock held by said Orrick, Trustee, to be paid directly to W. H. Huguley & Co., or their assigns. It is understood that sixty per cent and not more, of the dividends earned by said Company shall be declared semi-annually until a working capital of $20,000 is accumulated.

Eighth. In consideration of the said conditions, terms and stipulations said Jannopoulo hereby agrees and contracts as follows: That he will act as President and General Manager of said Huguley M'f'g of Georgia, for a reasonable compensation, it being understood that the salary of the President and General Manager and Treasurer, shall in the aggregate, not exceed $1,500 per annum. That he will endeavor to cause to be conveyed the said property now held by said Orrick, Chilton and Graham, Trustees to the said Huguley M'f'g Co., of Georgia; to resume operations and bring about this result as soon as practicable, and further agrees that on the execution and delivery of this to make immediate steps looking to the accomplishment of the result herein above stated.

To subscribe for $35,000 of the $50,000 of second eight per cent mortgage bonds, known as 1-14, (i. e., redeemable at the pleasure of the Company any time after one year with the privilege of running fourteen years,) and, in event all the

bonds are funded into six per cent bonds, then said Jannopoulo will accept the six per cents in lieu of the eight per cents. The price agreed upon to be par. It being intended to issue $50,000 of said second mortgage bonds. Said second mortgage bonds to be in fact first mortgage bonds of said Huguley Manufacturing Co.

It is further agreed that the said Jannopoulo may, at any time, after the trial balance of the first year's business is struck purchase ten per cent of the capital stock of the said Huguley Manufacturing Company at par, upon the payment to the said trustee of the said amounts. Said trustee may transfer the same to said Jannopoulo and remit the proceeds of said stock to the parties who may have transferred the same to said trustees, or their assigns, as their interest may appear.

Ninth. It is further agreed that the said Orrick, Trustee, shall also hold the said fifty-one per cent of stock, as collateral, to indemnify said Jannopoulo, or his assigns, against all losses, damages or liabilities, growing out of the contract hereinbefore mentioned with J. F. Plummer & Co., for such period as such claim on the part of J. F. Plummer & Co., or their assigns, may remain open and unsettled.

Tenth. In case of death of said Jannopoulo pending the period of his presidency of said Huguley Manufacturing Co., said Orrick, Trustee, shall appoint a President, who shall act until the estate of said Jannopoulo shall be relieved of all liability, on account of said Company, and shall have disposed of securities as hereinbefore provided, in case of request on him to resign as such president, and such president shall have same rights as, under this contract said Jannopoulo would have had, had he lived.

Eleventh. Said Huguley & Company agree, on request of said Jannopoulo, president, *without cost to said Huguley M'f'g. Co., to handle and warehouse all cotton purchased by said company, to forward all products of said company, without*

Charge to said company, and W. T. Huguley agrees to give his individual services, without charge, if requested, by Jannopoulo, president. in starting said mill, and generally co-operate in organizing the mill, and running the same.

In witness whereof, the said parties have hereunto set their hands and seals day of June, 1890.

United States of America, Northern District of Georgia.

In the Circuit Court of the United States for the Northern District of Georgia.

T. W. Williams and W. R. Kirby, N. P. West Point, Ga:

Whereas, There is a certain matter in controversy now pending and to be tried in the said Circuit Court between J. J. Robinson, trustee et al. and Huguley Manufacturing Company that

And Whereas, A. S. Elliott and G. A. Huguley, of Chambers county, Alabama are material witnesses in said suit on behalf of the defendants and can not attend said Circuit Court in person without manifest inconvenience.

Now Know Ye, That reposing special trust and confidence in your prudence and fidelity, you are hereby appointed, and you, or any two or more of you are hereby authorized and required to cause the said A. J. Elliott and G. A. Huguley personally to come before you, and after being duly sworn to examine them concerning the said suit, agreeably to the interrogatories hereunto attached; and the answers to the same being plainly and distinctly written, you are to send the same, together with this writ, closed up under your hands and seals, to the Clerk of said Court, at Atlanta, Ga., to the court now in session.

Witness, The honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States this 6th day of June, 1894.

(Seal.) O. C. FULLER, Clerk.

Depositions of Huguley and Elliott.

J. J. ROBINSON, TRUSTEE, ETC., *vs.* HUGULEY M'F'G COMPANY ET AL. } In the Circuit Court of the U. S., Northern District of Georgia.

Petition of defendants to vacate sale and for accounting of purchasers.

Interrogatories for A. S. Elliott and G. A. Huguley residents of Chambers county, Alabama, whom the petitioners propose to examine at West Point, Georgia.

1. Do you know the parties in the above stated case? Where do you reside? Where are you now while answering these questions?

2. Were either of you bondholders, or not, of the Alabama & Georgia Manufacturing Company? Before the sale of the mill belonging to said company said sale being made at Atlanta, Georgia, September, 6th, 1892, were either of you present or not at any meetings of the bondholders of said company?

3. Where were such meetings held, and at what time? What part did L. Lanier and A. T. Dallas, if any, take in said meetings? What policy, if any, did the said L. Lanier urge, and what the said A. T. Dallas? What was the object of these meetings? What did L. Lanier declare to be his object, and what did he say in support of the same? What did A. T. Dallas declare to be his object, and what did he say in support of the same?

4. What, if anything, did L. Lanier say as to insurance upon the property, and how did this influence the bondholders? Where did he say this, and how often?

5. Was there or not a meeting of said bondholders held in L. Lanier's room at the Kimball House, shortly before the sale mentioned? What did L. Lanier say, if he said anything was the object of this meeting? If he said any money

was to be raised, how much was it, and from whom, and how should it be so raised?

JOHN M. CHILTON,
JOHN C. REED,
Solicitors for Petitioners.

Cross Interrogatories.

1. When was the meeting held? Who was present? State the names of all the persons present. Who was the chairman of the meeting and who was the secretary?

2. How came you to know anything about any meeting? Who informed you?

3. Were you a bondholder, and if so, how many of the bonds of the Alabama & Georgia Manufacturing Co. did you have? What became of your bonds? Who acted for you in getting the money on them after the sale of the property?

4. Where are the bonds you held now? When did you last see them?

5. How came you to testify in this case? Did you tell counsel for the movants in the case what you would testify in the case? When did you do so? To whom did you talk before testifying in the case.

6. State all you know that goes to show that the bondholders held a meeting for the purpose of devising a plan to keep the property from being sacrificed, and that the bondholders held a meeting to decide on a line of action and conduct for the protection of themselves. Have you done so?

7. Don't you know that all that was done or said at the meeting inquired about was done to protect the bondholders against loss, if possible?

J. J. ROBINSON, ETC., *versus* HUGULEY M'F'G CO., ET AL. } In the Circuit Court of the United States, Northern District of Georgia.

STATE OF GEORGIA, }
County of Troup. }

By virtue of a commission issuing out of the Honorable

Circuit Court of the United States for the Northern District of Georgia to us directed, we have caused A. S. Elliott and G. A. Huguley, the witnesses in said commission named to come before us and being sworn true answers to make to the interrogatories to said commission annexed, deposes and answers as follows:

To the first interrogatory he answers:

Interrogatory 1. I know the parties. I reside in Chambers county, Ala., two miles from West Point, Ga. While answering these questions I am before the Commissioner W. L. Williams and W. J. Kirby, in West Point, Georgia.

Interrogatory 2. I was one of the bondholders of the Alabama & Georgia M'f'g Co., owing twenty-five hundred dollars ($2,500) of said bond. I also represented the bonds owned by Mrs. F. H. Huguley. Before the sale of the Mill belonging to said Company (Sept. 6th, 1892), I was present at certain meetings of the bondholders of said Company.

Interrogatory 3. About two weeks prior to said sale there *was* a formal meeting or *conference* of the bondholders which was held in the Young Men's Library rooms, in Lanier's Bank Building. Said meeting had been called by L. Lanier, who with A. T. Dallas, were *most conspicuous* and acted as *chief spokesman* during the deliberations which took place, J. T. Kirby of Newnan, Georgia, acted as Secretary.

There were two classes or wings of the bondholders, one of which consisted of those bondholders who were the real parties complainant in the action filed by L. Lanier and others looking to the foreclosure of their bonds. These complainants were Mrs. Lizzie F. Yancy, Miss Susie Huguley, A. T. Dallis, estate of M. T. Walker, and L. D. Hutchison representing in all about $38,000.00 of the first mortgage bonds. These were the parties who had declined to receive their interest and had allowed their names used in the filing of said suit.

The other class of bondholders, who had collected their

interest on due presentment of their coupons at the proper time and at the proper place and to the proper person, and who accordingly never had any grievance and therefore were never parties to said suit consisted of myself, Mrs. F. H. Huguley, Mrs. Sallie Huguley, The Atlanta National Bank, J. F. Hooper, the estate of Elliott and D. Jannopoulo, representing about $27,000.00 of said first mortgage bonds.

In explaining the object of said caucus or conference, L. Lanier stated that the object of said meeting was to induce all the bondholders to join together and "pool" their bonds for their mutual benefit and protection. To this end, he recommended that all the bonds should be surrendered or consigned to a committee, consisting of L. Lanier, A. T. Dallas and J. T. Kirby, which said committee were to bid all the bonds at said sale for the joint account, benefit and protection of said bondholders, whether complainants or non complainants. He stated that in this manner all parties concerned would either be able to buy the mill or in the event their bid did not prevail we would be all assured of getting *par* at least for our bonds.

It was distinctly stated and understood that this committee was to receive our bonds in trust, and as such trustees, they were to act for all the bondholders to the best interest of each and all.

Among other arguments used to carry his point, L. Lanier stated that in the event the bondholders bid prevailed at said sale, said committee would be charged with the duty to issue bonds or stock on the pro-rata basis, each person's interest in and to said property being represented in proportion to the amount of bonds held or contributed by each at the time of making said bid.

Another argument used by L. Lanier to induce myself and the other parties who had received their interest to "pool" our bonds in the purchase along with the real parties complainant, was the statement that even if we did not so pool,

we were liable for our share of the costs—just the same as those who had prosecuted the suit.

A. T. Dallas corroborated all these statements made by L. Lanier. Still another promise was made by L. Lanier to induce us to adopt his plans. He assured us that in the event the bondholder's bid should prevail, the new company which the bondholders as purchasers, should organize, would see to it that large improvements, repairs, machinery, etc., would be immediately applied thus enhancing the value of the property as a security to the bondholders.

Interrogatory 4. The argument advanced by L. Lanier as a reason why decisive action on the part of bondholders was necessary, and the one which seemed to carry with it the greatest weight with all the bondholders,—was the *positive* and *unqualified* statement made in that caucus by L. Lanier that *the mill was not insured and in the event of fire that the bondholders would suffer total lost.*

Interrogatory 5. Yes there was *another* meeting or conference of the bondholders which was held in Lanier's or Dallas's room in the Kimball House on the morning just preceding the sale of September 6th, 1892.

The object of said caucus as explained by L. Lanier, was to give Mrs. Sallie Huguley a final opportunity to join said pool, but particularly for the purpose of requiring all the bondholders to give their consent to the committee (Lanier, Dallas & Kirby,) to hypothecate or pledge their bonds with Jno. F. Hooper, this being the condition exacted by Hooper before he would advance the $10,000 required by the court as the initial payment on said purchase. This arrangement had been made with said Hooper by the committee in advance of our arrival in Atlanta, the committee having agreed to pay one per cent per month interest on said money.

There was *still another* meeting or conference of the bondholders held in the Young Men's Library in West Point, Georgia, whereat we went through a farcical process of jug-

gling whereby L. Lanier first issued to the subscribers to the pool a batch of Galeton Cotton Mills stock or papers representing stock.

Then required us to surrender the latter and in its stead he gave us a receipt calling for as many bonds as we had stock.

Subsequently two or three weeks thereafter these said receipts were called in by him, and again he substituted therefor the bonds (so called) of the "Galeton Cotton Mills Company of Chambers county, Alabama"—which alleged bonds are without any power of sale, and contain on their face no guarantee on the part of the trustee that the property was to be kept duly insured to the amount of the bonds, both of which provisions are expressly stipulated on the face of the original bonds surrendered by me to the committee.

(I was taxed with costs amounting to about four or five per cent of my holdings, the justice of which I fail to see, since I have never been a party complainant in said suit, but on the contrary, I with the others mentioned have repudiated said action as a fraud.)

There had been a *paper agreement* drawn up by Lanier's attorney, Freeman, which was signed by all present except Mrs. Sallie Huguley—the subscribers thereto having been induced to join with the real complainants by the representations made by said L. Lanier in said meeting or caucus.

No copy was given me of the paper I signed and I did not recall the exact terms of the same.

Answers to Cross Interrogatories.

Interrogatory 1. One of the meetings was held Friday, August 26th, 1892. The other meetings were held as stated in my answer to direct interrogatory number 3.

There were present A. T. Dallas, J. T. Kirby, L. J. Blackman, A. D. Moore and L. D. Hutchinson and L. Lanier,

representing the hostile or adverse wing of the bondholders representing about $38,000.00.

There were also present A. S. Elliott, Walter Elliott, Miss Lula Elliott, Mrs. Sallie Huguley and myself. We having collected our interest and had never been parties to the suit, and therefore representing the friendly interest of said bondholders, say about $25,000.00.

I do not recall exactly who attended the other meetings already mentioned in the direct examination.

The meetings were informal, J. T. Kirby acting as secretary.

Interrogatory 2. I think it was A. T. Dallis who first informed me that he and Mr. Lanier proposed to call such meetings and that he urged me to be present.

Interrogatory 3. I was a bondholder owning $2,500.00 of bonds of the Alabama and Georgia Manufacturing Company, and representing about the same amount for Mrs. F. H. Huguley.

As explained in my answer to direct interrogatory 5 the original bonds I owned and represented were surrendered by me to Dallas, Lanier and Kirby, the committee created by the bondholders charged with the duty to bid in said factory for our joint interest and benefit.

This committee though charged with the duty to take care of the interest entrusted to them, immediately after the sale ceased to act as a whole, L. Lanier having been the sole person who cut any figure in the distribution of the bonds.

I do not know who acted for me, but presumed the committee or Mr. Lanier.

Interrogatory 4. After surrendering my said original bonds to said committee I have never seen them since.

Interrogatory 5. I have never had any conversation with either of the counsel for movants. I came to testify in the case for several reasons.

In the first place because I feel that great injustice has

been done not only to W. H. Huguley & Co., and the Huguley M'f'g Company, but also to myself and every other bondholder, whether complainant or non-complainant, who has allowed himself influenced by L. Lanier. In the second place because certain representations made to myself and others of the bondholders by L. Lanier for the purpose of inducing us to allow our bonds pooled in said purchase were not true.

In the third place because I now know that I was so deceived to my absolute loss, not only in having been coerced into an arrangement which lost me a desirable investment, but subjecting me to a taxation of costs, etc., etc., without having received in return anything like my pro rata interest to which I was entitled. The alleged Galeton bond itself having turned out to be nothing like as good a security as the original gilt edge bond, which I was deceived into surrendering.

I talked with Mr. A. S. Elliott and Mr. W. T. Huguley and it was at the latter's suggestion that these depositions were taken for his interest as well as my own.

Interrogatory 6. I have already fully testified in answers to direct interrogatories as to what transpired at said meetings.

I admit that the object of my participation in said meetings was prompted mainly in said defense, because I was led to believe that the representations made by L. Lanier as to insurance and other material statements were true, and so believing I was alarmed as to my security. I was especially influenced by his argument that if we did not pool with the complaining bondholders we might not get 50c on dollar for our bonds. Being young and without legal advice and unduly alarmed as I have since ascertained I yielded to their importunities.

As to the property being "sacrificed" I can not say positively how it affected others, but the suggestion was advan-

ced that if we did not so pool the property might be sold and we be "mashed out" and many of us believed it.

Interrogatory 7. As explained in preceding answer I repeat that I believed "all that was done or said at the meeting inquired about." But, in the light of after events I now realize that I was deceived as explained and that L. Lanier was actuated in all that was said and done not so much to protect bondholders, but to get possession of his rival's property, without himself contributing one dollar to said purchase.

G. A. HUGULEY.

Answered, sworn to and subscribed before us this the 11th day of June, 1894.

W. J. KIRBY, Commissioner, L. S.
W. L. WILLIAMS, Commissioner, L. S.

Interrogatory 1. Yes, I know the parties.

I reside at the factory in controversy at River View, Chambers County, Ala.

I am before the Commissioners in West Point, Georgia, as I answer these questions.

Interrogatory 2. Individually I was not the owner of any of the bonds of the Ala. & Ga. M'f'g Co. but I represented as agent seven thousand dollars ($7,000.00) of said bonds owned by my mother, sister and brother.

I was present at *two caucuses or conferences* of bondholders prior to said sale.

holders prior to said sale.

Interrogatory 3. The *first* meeting of the bondholders, which I attended was held in the rooms of the Young Men's Library in Lanier's bank building in West Point, Ga. *The meeting was called by L. Lanier* about two weeks prior to the date fixed for said sale. *L. Lanier presided* over the deliberations. He and A. T. Dollis took a most prominent part throughout the whole of these and subsequent proceedings.

Mr. L. Lanier explained that he had a plan to urge which would protect the interest of all parties concerned.

There were two factions or parties of the bondholders, one consisting of Mrs. Lizzie Huguley Yancy, Miss Susie Huguley, the Estate of Mr. M. T. Walker, A. T. Dallas and L. D. Hutchinson representing about $38,000.00 of the first mortgage bonds. These were the parties who had allowed the use of their names in the suit filed by L. Lanier and were the real complainants in said suit.

The other faction or party consisted of my family, Mrs. Sallie Huguley, Mrs. F. H. Huguley, G. A. Huguley, the Atlanta National Bank, J. F. Hooper, D. Jannopoulo representing $25,000 of said bonds. The latter class had collected their interest on presentment at proper time and place, and therefore had never been parties to said litigation, but on the contrary had bitterly repudiated the whole attempt at foreclosure. Mr. Lanier explained that to carry out his policy, it would be necessary for both these factions to unite and pool their bonds and urged that the bonds should be intrusted to a committee consisting of L. Lanier, A. T. Dallas and J. T. Kirby, who should act as agents or trustees for all the bondholders and bid the full amount of all the bonds so pooled, for the joint account, interest and protection of said bondholders.

Acting upon *Mr. Lanier's* suggestion, *R. A. Freeman, Lanier's attorney, drew up a certain agreement* which was signed by all present except Mrs. Sallie Huguley. I did not keep a copy but was prevailed upon to sign it upon the representation then made by L. Lanier.

In support of his plan L. Lanier stated that by thus pooling the committee could either bid the full amount of all the bonds and thus guarantee the holders at least par, or in the event our bid should prevail we should own the property on

a prorata basis in proportion to the amount of bonds each contributed to the purchase.

He further promised if the property was knocked down to the bondholders the new Co. which the new company would organize were to institute at once repairs and improvements, thus increasing the security of the bondholders.

A. T. Dallas ratified all these representations of L. Lanier.

Interrogatory 4. The principal reason assigned by L. Lanier for prompt action on the part of the bondholders was that *the property had not been properly insured and in the event of fire the bondholders would suffer serious loss.*

This statement he made in said caucus or conference and greatly alarmed the bondholders and more than anything else induced them to pool.

More than once he told me the same thing in private conversation also.

Interrogatory 5. *There was a meeting* of the bondholders in L. Lanier's room in the Kimball House on the morning the sale took place, a few hours before, the object of the meeting as explained by L. Lanier was to afford Mrs. Sallie Huguley a chance to come into the pool, but especially for the purpose of authorizing the committee to turn over to the Atlanta National Bank the first mortgage bonds which we had surrendered before leaving West Point, said Bank to hold same as security or collateral for J. F. Hooper for the ten thousand dollars ($10,000) which L. Lanier had borrowed from Hooper some time before leaving West Point on a rate of one per cent per month interest I think.

There was a *subsequent meeting* of the bondholders a few days after the sale, when those who had joined in the purchase received certain receipts or acknowledgments entitling them to their prorata interest in the property but no regular stock certificates of stock were issued or ever have been issued so far, to us—the only evidence of such vested

interest as was acquired at said sale being so called bonds of the Galeton Cotton Mills Company, of Chambers county, Ala., a corporation which, I learn, has never been incorporated in the State of Georgia, notwithstanding the main building and machinery therein representing the bulk of the property all lie in Georgia.

The said alleged bonds contain no power of sale and no guarantee as to insurance on the part of the trustees, Dallas and Lanier.

A. S. ELLIOTT, L. S.

Answered, sworn to and subscribed before us this 30th day of May, 1894.

W. J. KIRBY, Commissioner, L. S.
W. L. WILLIAMS, Commissioner, L. S.

Answers to Cross Interrogatories.

X. Interrogatory 1. One of the meetings was held about August 26th, 1892, the others as explained in answers to direct interrogatories (No. 3).

The following were present: Hutchinson, Kirby, Blackman, Moore, Dallas, and Lanier, A. S. Elliott, Walter Elliott, Loula Elliott, G. A. Huguley, Mrs. Sallie Huguley. L. D. Hutchinson, Chairman; J. T. Kirby, Secretary.

X. Interrogatory 2. The first information I had as to any meeting was from a note, dated August 23d, 1892, from L. Lanier, as per exhibit "A," hereto attached.

X. Interrogatory 3. I represented the bonds owned by my family, amounting to $7,000.00. I surrendered said bonds to the committee, consisting of L. Lanier, A. T. Dallas and J. T. Kirby, who were expected to represent me, but L. Lanier seemed to attend to the duty of said committee after said sale.

X. Interrogatory 4. Haven't seen them since I turned them over to said committee.

X. Interrogatory 5. Because I believe a great wrong has been perpetrated against the defendants in this case, I

testify. I have had no conversation nor correspondence with the attorneys. I have talked to G. A. Huguley, J. H. Nolan and W. T. Huguley, and at the latter's request I volunteer this testimony.

X. Interrogatory 6. I have already testified fully as to the meetings of the bondholders. (See direct interrogatory No. 3.)

Under the representations made at said meeting I, with others, friendly to the Huguley Manufacturing Co., was led to believe unless we pooled our bonds with the rest of the bondholders we might suffer great loss. We were alarmed and joined in the pool under misapprehension of facts, having consulted no attorney.

X. Interrogatory 7. As we understood at the time, we were acting in *self defense* having been alarmed about *insurance* and low price the property might bring.

A. S. ELLIOTT, L. S.

Answered and sworn to and subscribed before us this the 11th day of June, 1894.

W. J. KIRBY, Commissioner, L. S.
W. L. WILLIAMS, Commissioner, L. L.

"*Exhibit A.*"

THE WEST POINT IRON WORKS.

ESTABLISHED IN 1874.

Engines, Mills and Cotton Presses, Shaftings, Pulleys, Hangers and Couplings.

IRON AND BRASS CASTINGS OF EVERY DESCRIPTION.

WEST POINT, GA., August 23, 1892.

Mr. A. S. Elliott,

DEAR SIR:—A *meeting* of the bondholders of the Alabama & Georgia Manufacturing Company has been called to meet here, Friday 26th inst. and I hope you can be here representing your family bonds, all of them or bring with you

the representatives. It's important to agree upon some plan to force the property to be sold for enough to pay off the bonds in full, and it's probable, if there is no understanding it may sell for so little as not to pay over fifty cents on the dollar. It's important for the bondholders to bring their bonds with them.

Yours truly,

L. LANIER.

United States of America, Northern District of Georgia.

In the Circuit Court of the United States for the Northern District of Georgia.

To R. F. Powell and A. B. Tadlock:

Whereas, There is a certain matter in controversy now pending and to be tried in the said Circuit Court, between J. J. Robinson, trustee, and Huguley Manufacturing Company et al.

And Whereas, Mrs. Sarah H. Kyle, is a material witness in said suit on behalf of the petitioners and can not attend said Circuit Court in person without manifest inconvenience.

Now Know Ye, That reposing special trust and confidence in your prudence and fidelity, you are hereby appointed, and you, or any two or more of you, are hereby authorized and required to cause the said Mrs. Sarah H. Kyle personally to come before you, and after being duly sworn, to examine her concerning the said suit, agreeably to the interrogatories hereunto attached; and the answers to the same being plainly and distinctly written, you are to send the same, together with this writ, closed up under your hands and seals to the clerk of said court, at Atlanta, Ga., to the court now in session by June 15th, 1894.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 6th day of June, 1894.

(SEAL) O. C. FULLER, Clerk.

J. J. ROBINSON, TRUSTEE, &c., *versus* HUGULEY M'F'G CO., ET AL. } In the Circuit Court of the United States, Northern District of Georgia.

Petition of Defendants to vacate sale and for accounting of Purchasers.

Interrogatories for Mrs. Sarah H. Kyle, a resident of Gadsden, Ala., but now staying temporarily at Winston, N. C., a material witness for the petitioners.

Interrogatory 1. Do you know the parties? Where do you reside? Where are you staying now, and how long will you probably be there? What is the name of your present husband, and what was your name before you married him?

Interrogatory 2. Do you know or not know of any meeting or meetings of the bondholders before the sale of the property of the Ala. & Ga. M'f'g Co., in Atlanta, Ga., September 6th, 1892? If you say there was any such meeting or meetings, where were they had, who were present, and what part, if any, did you take in same? What was the purpose of the meeting or meetings?

Interrogatory 3. Was Mr. Lanier present at any of these meetings? What part, if any, did he take in the same? What, if anything, did Mr. Lanier state as to insurance upon the property, and what did he say might be the consequence to the bondholders, if he said anything?

Interrogatory 4. What, if anything, did you say to Mr. Lanier upon the subject of the insurance, and what did he reply?

Interrogatory 5. What did Mr. Lanier say in these meetings indicating what he wished the bondholders to do? What was the result of the meeting, that is, what did the bondholders resolve to do and what did they do?

J. M. CHILTON,
JOHN C. REED,
Sols. for Petitioners.

Cross Interrogatories.

(1.) When was the meeting held? Who was present? State the names of all the persons present. Who was the chairman of the meeting and who was the secretary?

(2.) How came you to know anything about any meeting? Who informed you?

(3.) Were you a bondholder, and if so, how many of the bonds of the Alabama & Georgia Manufacturing Co., did you have? What became of your bonds? Who acted for you in getting the money on them after the sale of the property?

(4.) Where are the bonds you held now? When did you last see them?

(5.) How came you to testify in this case? Did you tell counsel for the movants in the case what you would testify in the case? When did you do so? To whom did you talk before testifying in the case?

(6.) State all that you know that goes to show that the bondholders held a meeting for the purpose of devising a plan to keep the property from being sacrificed, and that the bondholders held a meeting to decide on a line of action and conduct for the protection of themselves. Have you done so?

(7.) Don't you know all that was done or said at the meeting inquired about was done to protect the bondholders against loss, if possible?

J. J. ROBINSON, TRUSTEE, ETC., *vs.* HUGULEY M'F'G COMPANY ET AL. } In the Circuit Court of the U. S., Northern District of Georgia.

Petition of Defendants to Vacate sale and for accounting of Purchasers.

Interrogatories for Mrs. Sarah H. Kyle, a resident of Gadsden, Ala., but now staying temporarily at Winston, N. C., a material witness for the petitioners.

State of Tennessee, county of Monroe:

By virtue of a commission issuing out of the Honorable Circuit Court of the United States for the Northern District of Georgia, to us directed, we have caused Mrs. Sarah H. Kyle, the witness in said Commission named, to come before us, and being duly sworn, true answers to make to the interrogatories to the said Commission annexed, deposes and answers as follows, to-wit:

First Interrogatory she answers: I do. Gadsden, Ala., White Cliff Springs, Tennessee, time indefinite. R. B. Kyle. My name prior to my marriage was Sarah H. Huguley.

Second Interrogatory: Prior to said sale on Sept. 6th. 1892, *there were such meetings* of the bondholders of the Alabama & Georgia Manufacturing Company. The one I was prevailed upon to attend was held in the rooms of the Young Men's Library in the Lanier bank building. Present besides myself G. A. Huguley, J. Elliott, Miss Lula Elliott, A. T. Dallas, L. D. Hutchinson, J. T. Kirby, L. Lanier and others. This meeting was called by L. Lanier about two weeks in advance of said sale of the property. Having yielded to the importunity of A. T. Dallas and others who knew that I had never at any time been a party to said suit I only consented to attend said caucus somewhat reluctantly. I under protest being actuated largely by curiosity consequently not feeling in sympathy with the real complainants and having no confidence whatever in L. Lanier, who himself I believe did not own one dollar of the bonds, had used the names of others to engineer the suit, I held aloof and although noticing closely all which transpired I took little or no part in the proceedings. The purpose of the meeting as explained by Mr. L. Lanier was to induce those of us bondholders consisting of myself, Mrs. F. H. Huguley, G. A. Huguley, the Elliotts, the Atlanta National Bank, J. F. Hooper and D. Jannopoulo who represented about twenty-five thousand dollars of the first mortgage bonds, and who having always promptly collected our interest had never been

parties to said suit to join with the real parties complainants consisting of Mrs. Lizzie Yancy, Miss Susan Huguley, the estate of Walker and A. T. Dallas, representing in all about thirty eight thousand dollars of the bonds and pool our bonds for the purpose of buying in the factory property at the sale.

Third Interrogatory. Mr. L. Lanier was present at the meeting I attended, presided over same or acted as chief spokesman, taking a most conspicuous part throughout the entire proceedings. Among other arguments used to induce us to pool with the complaining bondholders was a *positive and unqualified statement made in that caucus by L. Lanier that the mill was at that time not insured and that in case of fire the bondholders would suffer total loss.*

Fourth Interrogatory. Upon my insisting that I knew the property was insured because I had been told so by W. T. Huguley one of the trustees and the party chiefly concerned in protecting the property L. Lanier and A. T. Dallas in turn *repeated that the matter of insurance had been investigated and that they knew that there was no insurance on the property.*

Fifth Interrogatory. Mr. Lanier urged the bondholders to pool their bonds as explained and in answer to 2nd interrogatory. His scheme as pointed out by him was that a committee should be created or appointed by the bondholders consisting of L. Lanier, A. T. Dallas, J. T. Kirby, into whose hands as agents or trustees all the bonds are to be consigned. Said committee was to be vested with full authority and charged with the duty to bid the full amount of all the bonds so pooled for the joint protection and interest of all subscribers or bondholders. The object thus to be obtained was for them to bid the property up to an amount which would net each bondholder at least par, or in the event the bid prevailed then said committee was of course to see to it that each participant in the purchase should receive his prorata share as

represented by the amount of bonds thus contributed in and to said purchase. Acting upon *L. Lanier's* advice and representation all the bondholders present *did sign or agree to sign an agreement* to be prepared in accordance with the above by Freeman, Lanier's attorney, except myself. I declined to sign. For my part believing that L. Lanier did not individually own one dollar of the bonds, and believing that he was setting a trap for his victims and especially because I had no earthly confidence in the man, I refused to join with the others in following his leadership in any connection. Accordingly I placed my bonds in the hands of my attorney, Col. N. J. Hammond, to protect my interest in the premises and it was in my interest and protection alone and for no one else except his own, that he submitted that first bid of sixty-five thousand dollars. In face of this bid and despite the fact that I had never been a party to the suit, but on the contrary I had informed J. J. Robinson, Trustee, that I repudiated the whole foreclosure proceedings as a fraud, I was yet unjustly taxed on my six thousand dollars of bonds about twenty per cent, realizing only about eighty per cent cash on the face value of my bonds. With the exception of myself and D. Jannopoulo all the other bondholders whether complainants or non-complainants joined in the purchase of said property at said sale.

Cross Interrogatories.

To First Cross Interrogatory she answers:

The only meeting I attended was held about two weeks prior to Sept. 6th, 1892.

There were present besides myself, G. A. Huguley, A. J. Elliott, Miss Lula Elliott, A. T. Dallas, J. T. Kirby, L. J. Blackman, L. Lanier, who I understood or who claimed the bonds by Mrs. Lizzie Huguley Yancy, and Miss Susie Huguley and others present whose names I do not now recollect. L. Lanier was chairman and J. T. Kirby was Secretary.

To second cross Interrogatory she answers: I was notified to attend the meeting by A. T. Dallas and requested to attend by Stephen Elliott.

To third Interrogatory she answers: I was a bondholder owning six thousand dollars of the first mortgage bonds of the Alabama & Georgia Manufacturing Company's bonds as already explained in my answer in the direct interrogatories. Upon my refusal to join in Mr. Lanier's proposed pool with the complaining bondholders, I then placed my bonds in the hands of my personal attorney, Col. N. J. Hammond. After my attorney, Col. Hammond had collected about eighty per cent of my bonds, after deducting his fee of one hundred and fifty dollars for attending to the matters he remitted me a check for the balance returning to me at the same time all of my bonds of the Alabama & Georgia M'f'g Co. with the following indorsement on each "Paid on this bond under decree of confirmation of sale by the United States Circuit Court, case Robinson, Trustee vs. Alabama & Georgia M'f'g Co., of date Sept. 16, 1892, the sum of $425.-168.3-100. This amount covers bond, coupon and interest, to date, signed, A. E. Buck, Commissioner.

Fourth cross Interrogatory she answers: All of said bonds except one are now in my safe in West Point, Ga., or were then when I saw them about 18 months ago. The one referred to in the hands of W. T. Huguley.

Fifth cross Interrogatory she answers. I am testifying in this case of my own accord and from a sense of duty, because I desire to contribute all I can toward undoing a great wrong, which I know L. Lanier has perpetrated not only against his business rivals W. H. Huguley & Co. and the Huguley M'f'g Co. but also against myself and other bondholders representing about $25,000.00 of said bonds who were abundantly satisfied with our investment in said bonds and the ample security and inviting interest paid us. I never told counsel for movants anything. Having had no

conversation with them. I have had conversations with Mr. W. T. Huguley and my attorney Col. Hammond and perhaps others in connection with the foreclosure proceedings.

Sixth cross Interrogatory she answers. In my answer to the direct interrogatories propounded I have already told all I know concerning the meeting of the bondholders and the object of same. Holding bonds secured by first mortgage of $65,000 on a property whose plans alone had cost over $320,000, whose main building and machinery therein and alone was insured for $200,000 of which the 1st $65,000 had been set apart for the bondholders, representing as security whose interest had always been paid promptly to the day when due presentment was made at the proper time and at the proper place and to a proper person, I for one failed to see in the first place the common sense for any bondholder allowing the use of his name by L. Lanier in instituting any foreclosure at all. I certainly fail to see any cause for the grave apprehensions felt and the extraordinary precautions urged by L. Lanier in the meetings to the end that loss might be averted to the bondholders from a sale which had been brought about by their own folly. Therefore I for one never saw either occasion or necessity of devising a plan to keep the property from being "sacrificed." I could not conceive how such a "sacrifice" was possible at least as to these bondholders who had never been parties to said suit, unless indeed such sacrifice should result from their property being eaten up by court cost of which I had been already taxed unjustly about 20 per cent of my holdings.

I have stated all I know of the meetings referred to in my answers to direct and cross interrogatories.

Seventh cross interrogatories she answers: I do not know that all that was done or said at the meeting inquired about was done to protect the bondholders against loss. On the contrary while urging his scheme of pooling for the nominal and ostensible purpose of protecting the bondholders, from

all which transpired at said meeting and in connection therewith, particularly in view of the reckless misstatements made about insurance etc, I was impressed with the belief that the real and sole purpose of L. Lanier who was most conspicuous in all that was done or said was to secure the control of the mill property without contributing if possible one dollar in and to said purchase. How accurate was the conclusion and how well Mr. L. Lanier succeeded is shown by the fact that after saddling on his victims court costs aggregating about 20 per cent of their holdings I am informed that in recognition of the vested rights of ownership acquired at said sale L. Lanier has so far distributed a so called bond, in reality nothing more than a mortgage of the Galeton Cotton Mills of Chambers county, Ala., in proportion to a like amount of the original first mortgage of the Alabama & Georgia Manufacturing Company bonds. Said Cotton Mill bonds, as witness is informed (and witness holds one of the bonds) is without power of sale and of no guarantee from the trustee that the insurance will be kept up. Witness is further informed that said L. Lanier and who she believes never contributed one dollar in and to said purchase, either of bonds or money has issued to himself all of the capital stock of the Galeton Cotton Mills, except $500 each, issued to A. T. Dallas and L. J. Blackman, which said capital stock in equity should have been distributed pro rata among those of the bondholders of the Alabama & Georgia Manufacturing Company who had really contributed to the purchase of the property.

SARAH H. KYLE.

Answered, sworn to and subscribed before us this the 13th day of June, 1892, at White Cliff Springs, Monroe county, Tennessee.

R. F. POND, Seal.

A. B. TADLOCK, Seal.

Number 7. Par value $100.00 each. Shares 46.

This certifies that G. A. Huguley is entitled to forty-six shares of the capital stock of the Galeton Cotton Mills transferable only on the books of the Company in person or by attorney, on surrender of this certificate properly endorsed.

West Point, Ga., Oct. 10th, 1892.

L. J. BLACKMAN, Sec'y. L. LANIER, Pres.

(Seal Galeton Cotton Mills, West Point, Ga.)

Cancelled.

ENDORSED ON BACK.

For value received I hereby sell, assign and transfer unto West Point, M'f'g Co., all my right, title and interest in the within shares of stock and irrevocably constitute and appoint L. J. Blackman my true and lawful attorney for me and in my name to transfer same on books of the company with full power of substitution.

West Point, Ga., Oct. 10, 1892.

G. A. HUGULEY.

Witness, L. LANIER.

I authorize H. S. Sears to make this transfer.

L. J. BLACKMAN.

Number 8 Par value $100.00 each. Shares 34.

This certifies that E. J. Nolan is entitled to thirty-four shares of the capital stock of the Galeton Cotton Mills transferable only on the books of the Company in person or by attorney, on surrender of this certificate properly endorsed.

West Point, Ga., Oct. 10, 1892.

L. J. BLACKMAN, Sec'y. L. LANIER, Pres.

(Seal Galeton Cotton Mills, West Point, Ga.)

Cancelled.

ENDORSED ON BACK.

For value received I hereby sell, assign and transfer unto West Point Mfg Co., all my right, title and interest in the within shares of stock and irrevocably constitute and appoint L. J. Blackman, my true and lawful attorney for me and in

my name to transfer same on books of the company with full power of substitution.

West Point, Ga., Oct. 10, 1892.

E. J. NOLAN.

Witness, L. LANIER.

I authorize H. S. Sears to make this transfer.

L. J. BLACKMAN.

Number 7 Par value $100.00 each. Shares 5.

This certifies that Mrs. Susan Elliott is entitled to five shares of the Capital Stock of the Galeton Cotton Mills, transferable only on the books of the Company in person or by attorney, on surrender of this certificate properly endorsed.

West Point, Ga., October 10th, 1892.

L. J. BLACKMAN, Sec. L. LANIER, Pres.

(Seal Galeton Cotton Mills, West Point, Ga.)

Cancelled.

ENDORSED ON BACK.

For value received I hereby sell, assign and transfer unto West Point M'f'g Co., all my right, title and interest in the within shares of stock, and irrevocably constitute and appoint L. J. Blackman my true and lawful attorney for me and in my name to transfer same on books of the company with full power of substitution.

West Point, Ga., October 10th, '92.

MRS. SUSAN ELLIOTT.

Witness, L. LANIER.

I authorize H. S. Sears to make this transfer.

L. J. BLACKMAN.

Number 10. Par value $100.00 each. Shares 20.

This certifies that J. E. Elliott is entitled to twenty shares of the Capital Stock of the Galeton Cotton Mills, transferable only on the books of the Company in person or by attorney, on surrender of this certificate properly endorsed.

West Point, Ga., October 10th, 1892.
L. J. BLACKMAN, Sec. L. LANIER, Pres.
(Seal Galeton Cotton Mills, West Point, Ga.).
Cancelled.

ENDORSED ON BACK.

For value received I hereby sell, assign and transfer unto West Point M'f'g Co., all my right, title and interest in the within shares of stock and irrevocably constitute and appoint L. J. Blackman my true and lawful attorney for me and in my name to transfer same on books of the company, with full power of substitution.

West Point, Ga., October 10th, '92.

JAMES E. ELLIOTT.

Witness, L. LANIER.

I authorize H. S. Sears to make this transfer.

L. J. BLACKBURN.

Number 10. Par value $100.00 each. Shares 15.

This certifies that Miss Lula Elliott is entitled to fifteen shares of the capital stock of the Galeton Cotton Mills transferable only on the books of the Company in person or by attorney, on surrender of this certificate properly endorsed.

West Point, Ga., Oct. 10th, 1892.

L. J. BLACKMAN, Sec. L. LANIER, Pres.
(Seal Galeton Cotton Mills, West Point, Ga.)
Cancelled.

ENDORSED ON BACK.

For value received I hereby sell, assign and transfer unto West Point M'f'g Co., all right, title and interest in the within shares of stock and irrevocably constitute and appoint L. J. Blackman my true and lawful attorney for me and in name to transfer same on books of the company with full power of substitution.

West Point, Ga., Oct. 10th, 1892.

LULA ELLIOTT.

Witness, L. LANIER.

I authorize H. S. Sears to make this transfer.

L. J. BLACKMAN.

Number 12. Par value $100.00 each. Shares 35.

This certifies that L. D. Hutchison is entitled to thirty-five shares of the capital stock of the Galeton Cotton Mills transferable only on the books of the Company in person or by attorney, on surrender of this certificate properly endorsed.

West Point, Ga., Oct. 10th, 1892.

L. J. BLACKMAN, Sec'y. L. LANIER, Pres.

(Seal Galeton Cotton Mills, West Point, Ga.)

Cancelled.

ENDORSED ON BACK.

For value received I hereby sell, assign and transfer unto West Point M'f'g Co., all my right, title and interest in the within shares of stock and irrevocably constitute and appoint L. J. Blackman my true and lawful attorney for me and in my name to transfer same on books of the company with full power of substitution.

West Point, Ga., Oct. 10th, 1892.

L. D. HUTCHISON.

Witness, L. LANIER.

I authorize H. S. Sears to make this transfer.

L. J. BLACKMAN.

Number 11 Par value $100.00 each. Shares 23.

This certifies that R. M. Hackney is entitled to twenty-three shares of the capital stock of the Galeton Cotton Mills transferable only on the books of the company in person or by attorney, on surrender of this certificate properly endorsed.

West Point, Ga., Oct. 10th, 1892.

L. J. BLACKMAN, Sec'y. L. LANIER, Pres.

(Seal Galeton Cotton Mills, West Point, Ga.)

Cancelled.

ENDORSED ON BACK.

For value received I hereby sell, assign and transfer unto West Point M'f'g Co. all my right, title and interest in the within shares of stock and irrevocably constitute and appoint L. J. Blackman my true and lawful attorney for me and in

my name to transfer same on books of the company with full power of substitution.

West Point, Ga., Oct. 10th, 1892.

R. M. HACKNEY.

Witness, L. LANIER.

I authorize H. S. Sears to make this transfer.

L. J. BLACKMAN.

Number 1. Par value $100.00 each. Shares 12.

This certifies that L. J. Blackman is entitled to twelve shares of the capital stock of the Galeton Cotton Mills transferable only on the books of the company in person or by attorney, on surrender of this certificate properly endorsed.

West Point, Ga., Oct. 10th, 1892.

L. J. BLACKMAN, Sec'y. L. LANIER, Pres.

(Seal Galeton Cotton Mills, West Point, Ga.)

Cancelled.

ENDORSED ON BACK.

For value received I hereby sell, assign aand transfer unto West Point M'f'g Co. all my right, title and interest in the within shares of stock and irrevocably constitute and appoint L. J. Blackman my true and lawful attorney for me and in my name to transfer same on books of the company with full power of substitution.

West Point, Ga., Oct. 10th, 1892.

L. J. BLACKMAN.

Witness, L. LANIER,

L. J. BLACKMAN.

I authorize H. S. Sears to make this transfer.

L. J. BLACKMAN.

Number 2. Par value $100.00 each. Shares 58.

This certifies that A. T. Dallas is entitled to fifty-eight shares of the capital stock of the Galeton Cotton Mills transferable only on the books of the Company in person or by

attorney, on surrender of this certificate properly endorsed.

West Point, Ga., Oct. 10th, 1892.

L. J. BLACKMAN, Sec'y. L. LANIER, Pres.

(Seal Galeton Cotton Mills, West Point, Ga.)

Cancelled.

ENDORSED ON BACK.

For value received I hereby sell, assign and transfer unto West Point M'f'g Co., all my right, title and interest in the within shares of stock and irrevocably constitute and appoint L. J. Blackman my true and lawful attorney for me and in my name to transfer same on books of the company with full power of substitution.

West Point, Ga., Oct. 10, 1892.

A. T. DALLAS.

Witness, L. LANIER.

I authorize H. S. Sears to make this transfer.

L. J. BLACKMAN.

Number 3. Par value $100.00 each. Shares 23.

This certifies that A. D. Moore and J. T. Kirby are entitled to twenty-three shares of the capital stock of the Galeton Cotton Mills transferable only on the books of the Company in person or by attorney, on surrender of this certificate properly endorsed.

West Point, Ga., Oct. 10th, 1892.

L. J. BLACKMAN, Sec'y. L. LANIER, Pres.

(Seal Galeton Cotton Mills, West Point, Ga.)

Cancelled.

ENDORSED ON BACK.

For value received I hereby sell, assign and transfer unto West Point M'f'g Co. all my right, title and interest in the within shares of stock and irrevocably constitute and appoint L. J. Blackman my true and lawful attorney for me and in my name to transfer same on books of the company with full power of substitution.

West Point, Ga., Oct. 10th, 1892.

A. D. MOORE,
JAS. I. KIRBY.

Witness, L. LANIER.

I authorize H. S. Sears to make this transfer.

L. J. BLACKMAN.

Number 13. Par value $100.00 each. Shares 334.

This certifies that L. Lanier is entitled to three hundred and thirty-four shares of the capital stock of the Galeton Cotton Mills transferable only on the books of the Company in person or by attorney, on surrender of this certificate properly endorsed.

West Point, Ga., Oct. 10th, 1892.

L. J. BLACKMAN, Sec'y. L. LANIER, Pres.

(Seal Galeton Cotton Mills, West Point, Ga.)

Cancelled.

ENDORSED ON BACK.

For value received I hereby sell, assign and transfer unto West Point M'f'g Co., all my right, title and interest in within shares of stock and irrevocably constitute and appoint L. J. Blackman my true and lawful attorney for me and in my name to transfer same on books of the company with full power of substitution.

West Point, Ga., Oct. 10th, 1892.

L. LANIER.

Witness, POMP S. LANIER.

I authorize H. S. Sears to make this transfer.

L. J. BLACKMAN.

Number 5. Par value $100.00 each. Shares 22.

This certifies that A. D. Moore is entitled to twenty-two shares of the capital stock of the Galeton Cotton Mills transferable only on the books of the Company in person or by attorney, on surrender of this certificate properly endorsed.

West Point, Ga., Oct. 10th, 1892.

L. J. BLACKMAN, Sec'y. L. LANIER, Pres.

(Seal Galeton Cotton Mills, West Point, Ga.)

Cancelled.

ENDORSED ON BACK

For value received I hereby sell, assign and transfer unto West Point M'f'g Co., all my right, title and interest in the within shares of stock and irrevocably constitute and appoint L. J. Blackman my true and lawful attorney for me and in my name to transfer same on books of the company with full power of substitution.

West Point, Ga., Oct. 10th, 1892.

A. D. MOORE.

Witness, L. LANIER.

I authorize H. S. Sears to make this transfer.

L. J. BLACKMAN.

Number 6. Par value $100.00 each. Shares 23.

This certifies that J. T. Kirby is entitled to twenty-three shares of the capital stock of the Galeton Cotton Mills transferable only on the books of the Company in person or by attorney, on surrender of this certificate properly endorsed.

West Point, Ga., Oct. 10th, 1892.

L. J. BLACKMAN, Sec'y. L. LANIER, Pres.

(Seal Galeton Cotton Mills, West Point, Ga.)

Cancelled.

ENDORSED ON BACK.

For value received I hereby sell, assign and transfer unto West Point M'f'g Co. all my right, title and interest in the within shares of stock and irrevocably constitute and appoint L. J. Blackman my true and lawful attorney for me and in my name to transfer same on books of the company with full power of substitution.

West Point, Ga., Oct. 10th, 1892.

JOSEPH I. KIRBY.

Witness, L. LANIER.

I authorize H. S. Sears to make this transfer.

L. J. BLACKMAN.

Number 14 Value of shares $100.00 each. Shares 650.

This certifies that the West Point Manufacturing Company is entitled to six hundred and fifty shares of the capital stock of the Galeton Cotton Mills, transferable on the books of the company in person or by attorney on surrender of this certificate properly endorsed.

West Point, Ga., June 14th, 1893.

HORACE S. SEARS, Treasurer. W. C. LANIER, Pres.

(Seal Galeton Cotton Mills, West Point, Ga.)

Report of A. E. Buck, Master as to Outstanding Bonds.

J. J. ROBINSON, TRUSTEE,
versus
ALA. & GA. M'F'G. CO.

Final decree and foreclosure and sale thereunder in the U. S. Circuit Court, Northern District of Ga.

Report of A. E. BUCK, Commissioner.

J. J. ROBINSON, TRUSTEE,
versus
ALA. & GA. M'F'G CO.

Final decree foreclosure and sale thereunder in the U. S. Circuit Court, Northern District of Georgia.

To the Honorable the Circuit Court of U. S. Northern District of Georgia.

The following statement of A. E. Buck shows that he acted as Special Master by consent of counsel for parties at interest to ascertain the amount due on each of the outstanding first mortgage bonds and coupons attached thereto, of the said Alabama & Georgia Manufacturing Company and he reports to the court that all of said bonds and outstanding coupons were placed in his hands for purpose of ascertaining amounts due thereon by the persons named in the following statement, which statement contains the numbers, amounts,

owners of bonds, and amount due on each for principal and interest to-wit:

L. Lanier,—$15,000.00—coupons and interest 2 1-2 years and 2 1-2 months, $3,250.00,—interest on coupon $302.75, indebtedness $18,552.75—80.43—$14,921.97. (Numbers of bonds, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66.)

L. Lanier,—$8,000.00, coupons and interest 2 1-2 years and 2 1-2 months $1,733.33, interest on coupon $161.45, indebtedness $9,894.78—80.43—$7,958.37. (Numbers of bonds, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36.)

A. T. Dallas, $5,000.00. Coupons and int. 2 1-2 years and 2 1-2 mos. $1,083.33. Int. on coupon, $110.92. Indebtedness, $6,194.25—80.43—$4,982.03. (Numbers of bonds 89, 90, 91, 92, 93, 94, 95, 96, 97, 98.)

E. J. Nolan, $3,000.00 Coupon and int. 2 1-2 years and 2 1-2 mos. $650.00. Int. on coupons $60.55. Indebtedness $3,710.55—80.43—$2,984.39. (Numbers of bonds 105, 106, 107, 108, 109, 110.)

Hackney, $2,000 & Blackman, $1,000, $3,000.00. Coupons and int. 2 1-2 years and 2 1-2 mos. $650.00. Int. on coupons $60.55. Indebtedness $3,710.55—80.43—$2,894,-39. (Numbers of bonds 11, 12, 13, 14, 7, 8.)

L. D. Hutchison $3,000.00. Coupons and int. 2 1-2 years and 2 1-2 mos $650.00. Int. on coupons $60.55. Indebtedness $3,710.55—80.43—$2,984.39. (Number of bonds 99, 100, 101, 102, 103, 104.)

Julia A. Walker, $2,000.00. Coupons and int. 2 1-2 years and 2 1-2 mos. $433.33. Int. on coupons $40.36. Indebtedness $2,473.69—80.43—$1,989.58. (Numbers of bonds 5, 6, 15, 16.)

A. D. Moore, $2,000.00. Coupons and int. 2 1-2 years and 2 1-2 mos. $433.33. Int. on coupons $40.36, $2,473.69 —80.43—$1,989.58. (Numbers of bonds 1, 2, 3, 4.)

Lou E. Kirby $2,000.00. Coupons and int. 2 1-2 years and 2 1-2 mos. $433.33. Int. on coupons $40.36, $2,473.69 —80.43—$1,989.58. (Numbers of bonds 17, 18, 19, 20.)

G. A. Huguley $1,000.00. Coupons and int. 2 years and 2 1-2 mos. $176.66. Int. on coupons $18.20, $1,194.86— 80.43—$961.02. (Numbers 9, 10.)

Atlanta Nat'l Bank, $2,000.00. Coupons and int. 2 years and 2 1-2 mos. $353.32. Int. on coupons $36.40, $2,389.72 —80.43—$1,922.05. (Numbers of bonds 125, 126, 127, 128.)

G. A. Huguley $1,500.00. 8 1-2 mos. $85.00, .87, $1,585.- 87—80.43—$1,275.51. (Numbers of bonds 119, 120, 121.)

J. F. Hooper, $1,500.00, 8 1-2 mos. $85.00, .87, $1,585.- 87,—80.43—$1,275.51. (Numbers of bonds 122, 123, 124.)

L. Lanier, $1,500.00, 8 1-2 mos. $85.00, .87, $1,585.87, —80.43—$1,275.51. (Numbers of bonds 81, 82, 83.)

L. Lanier, $1,500.00 Coupons and int. 8 1-2 mos. $85.00. Int. on coupons 87. Indebtedness $1,585.87—80.43—$1,- 275.51. (Numbers of bonds 77, 87, 88.)

Lula A. Elliott, $1,500.00 8 1-2 mos. $85.00, .87 $1,585,- 87—80.43—$1,275.51. (Numbers of bonds 84, 85, 86.)

J. E. Elliott, $2,000.00 Indebtedness $2,114.40—80.43 —$1,700.68. (Numbers of bonds 76, 79, 78, 80.)

Mrs. S. Elliott, $500.00. Indebtedness $528.62—80.43— $425.16. (Number of bond 75.)

F. H. Huguley $2,000.00, 8 1-2 mos. $113.32, $1.16, $2,- 114.48—80.43—$1,700.67. (Number of bonds 111, 112, 113, 114.)

Mrs. S. H. Huguley, $6,000.00, 8 1-2 mos. $339.96, $3.48, $6,343.44—80.43—$5,102.02. (Numbers of bonds 67, 68, 69, 70, 71, 72, 73, 74, 115, 116, 117, 118.)

L. Lanier, $1,000.00, 8 1-2 mos. $56.66, .58, $1,057.24— 80.43—$850.33. (Numbers of bonds 129, 130.)

W. C & L Lanier 80.00, 4 coupons 3.20, 83.20, 80.43, 66.91.

$65,080.00, $11,003.23, $946.67, $76,949.90, $61,897.50.

Proceeds of Sale		$66,000.00

To disposition of Proceeds.

To credits entered on bonds and coupons	$61,897.50	
To B. F. Abbott & Co., attorney fees	1,000.00	
To Dorsey, Brewster & Howell	1,000.00	
To Denson	600.00	
To J. J. Robinson, trustee	500.00	
To costs paid clerk of court	230.50	
To advertising Atlanta Constitution	160.00	
To advertising Atlanta Journal	90.00	
To commissioners taking depositions	120.00	
To commissioners sale fees	400.00	
		$66,000.00

All of said bonds were used by purchasers of the property in part payment of the purchase money except the bonds numbered as follows 67, 68, 69, 70, 71, 72, 73, 74, 115, 116, 117, 118: and which were in hands of Messrs. N. J. & T. A. Hammond, attorneys for Mrs. S. H. Huguley. The foregoing statement is correct as to all recital of facts therein contained. Petitioner has now all of said bonds except 67, 68, 70, 71, 72, 73, 74, 115, 116, 117, 118, which he returned to N. J. & T. A. Hammond after having paid in cash and entered thereon each bond the prorata share due on said bonds. The amount paid on each bond is entered thereon and is the proper prorata share of the proceeds of sale of the property, and he herewith submits the same with this report.

Petitioner prays that this his supplement report be filed and approved and that he be discharged from all further duty and responsibility in said matter.

Respectfully submitted,

A. E. BUCK, Commissioner.

Filing: Filed in Clerk's Office 11 day of March, 1893.

O. C. FULLER, Clerk.

Deed of A. E. Buck, Commissioner to L. Lanier, et als.

UNITED STATES OF AMERICA, State of GEORGIA, Fulton County.

Whereas in obedience to a decree of the Circuit Court of the United States for the Northern District of Georgia at the suit of J. J. Robinson, trustee vs. The Alabama & Georgia Manufacturing Company, et al. which decree dated 30th day of May, 1892, A. E. Buck was appointed to make sale of the property herein after described and whereas said A. E. Buck did advertise said property and expose the same for sale at public outcry before the court house door of Fulton county Georgia on the first Tuesday in September, 1892. within the legal hours of sale when the same was knocked off to L. Lanier, A. T. Dallas and T. J. Kirby as trustees for all the bondholders of said Alabama & Georgia Manufacturing Company except six thousand (6,000) dollars paid by S. N. Huguley and one thousand (1,000) dollars by another person, at and for the sum of sixty-six thousand (66,000) dollars, and whereas, said A. E. Buck has made report of said sale to said Circuit Court and the same has been confirmed by decree of said court and said Buck has been directed to make deed to said purchaser. Now in compliance with said decree and in consideration of sixty-six thousand (66,000) dollars to him paid by L. Lanier, A. T. Dallas and T. J. Kirby, as trustees as aforesaid the receipt whereof is hereby acknowledged the said A. E. Buck commissioner of said court has this day granted, bargained, sold and conveyed unto said L. Lanier, A. T. Dallas and T. J. Kirby as trustees all of the estate, title and interest to and of said Alabama & Georgia Manufacturing Company to the following described property. All of a large island in the Chattahoochee river designated as island number six (6) containing one hundred and forty three (143) acres more or less, also island number (9) containing seven (7) acres more or less, also a small island between island number nine (9) and number six (6) upon

which the east end of the factory building rests, containing four (4) acres more or less, all of the three above described islands being in the twentieth (20) District of Harris county, Georgia.

Also all that tract or parcel of land lying on the west side of the Chattahoochee river opposite the above described islands, bounded on the east by said river, beginning at a point on the west bank of the river nearly opposite the center of the seven acre at a black gum at or near a place known as Sell's corner; thence a straight line to a point where the land owned in 1868 by Mrs. Freeman, Jos. Ross and James Campbell join, known then as Ross and Freeman corner to a pine stake; thence a line to a branch to said stake, and thence a line down said branch to said river and then down the western bank of said river to the beginning point, containing sixty-five and twenty-three one- hundredths (65 23-100) acres more or less lying and being in Chambers county of the State of Alabama and being part of section twenty-eight (28) and twenty-nine (29) township twenty-one (21), range twenty-nine (29), as well as the forty foot (40) right of way from the factory building to the public road leading to the public road leading from the factory building to the public road, leading from West Point, Georgia, to Beula, Alabama, at any point where the factory company may locate it including all tenements and improvements, including the Cotton Mill and all machinery therein or thereto belonging and all water privileges, riparian rights now or hereafter owned and enjoyed by the said Alabama & Georgia Factory. To have and to hold the said property together with all the rights, members and appurtenances unto them the said bargainers and their successors in trust in as full and ample manner as the said Alabama & Georgia Manufacturing Company or any person holding under or through it, might or could have enjoyed the same. In testimony whereof the said A. E. Buck, said commissioner, hath this day set and affixed his seal this September 16th, 1892.

A. E. BUCK, (Seal) Commissioner.

Signed, sealed and delivered in the presence of O. C. Fuller, U. S. Commissioner for the Northern District of Georgia.

O. E. MITCHELL, N. P. Fulton county, Georgia.
B. N. ABBOTT.

Filed in office for record Oct. 11th, 1892, and was duly recorded Oct. 12th, 1892.

J. J. ROBINSON, Judge of Probate.

State of Alabama, Chambers county.

I, Lloyd Robertson, Judge of Probate Court in and for said county in said state hereby certify that the foregoing is a true and correct copy of deed A. E. Buck, Commissioner, to L. Lanier, et als, as recorded in Vol. 22 page 458 Record of Deeds.

Given under my hand and seal of office this 9th day of June, 1894.

(Seal.) LLOYD ROBERTSON, Judge of Probate.

Deed of L. Lanier, et als, Trustees of Bondholders to Galeton Cotton Mills.

Georgia, Troup County.

This indenture made this the 10th day of October, 1892, between L. Lanier, A. T. Dallis and Jos. T. Kirby, trustees for the bondholders of the Alabama and Georgia Manufacturing Company of the one part, and the Galeton Cotton Mills, a corporation duly established under the laws of Alabama of the other part witnesseth; that whereas under a decree of the Circuit Court of the United States for the Northern District of Georgia in the suit of J. J. Robinson, trustee, vs. The Alabama and Georgia M'f'g Co., et als, A. E. Buck was appointed to make sale of the property of the Alabama & Georgia M'f'g Co., and at the sale of said property the first Tuesday in September, 1892, the said L. Lanier, A. T. Dallas and Jos. T. Kirby became the purchasers of said property as trustees for the holders of the bonds of the said Alabama & Georgia M'f'g Co., and whereas said bondholders have organ-

ized a corporation under the laws of the State of Alabama under the name and style of the Galeton Cotton Mills, said bondholders of said Alabama & Georgia M'f'g Co., constituting the stockholders of Galeton Cotton Mills at a meeting regularly called and held at the office of said corporation on the 10th day of Oct., 1892, by unanimous vote all of said bondholders being present or represented, authorized and instructed the said L. Lanier, A. T. Dallas, Jos. T. Kirby, trustees as aforesaid to execute a deed to the aforesaid property to the said Galeton Cotton Mills. Now therefore for and in the consideration of dollars to us in hand paid by the said Galeton Cotton Mills the receipt whereof is hereby acknowledged the said L. Lanier, A. T. Dallas and Jos. T. Kirby trustees as aforesaid have granted, bargained sold and conveyed and do by these presents grant, bargain, sell and convey unto the said Galeton Cotton Mills and its assigns the following described property to-wit.

All of a large island in the Chattahoochee river designated as island No. six (6) containing one hundred and forty three (143) acres more or less. Also island number nine (9) containing seven (7) acres more or less. Also a small island between islands number nine (9) and number (6) upon which the east end of the factory building rests, containing four (4) acres more or less, all of the above described islands being in the twentieth district of Harris county, Georgia.

Also all that tract or parcel of land lying on the west side of the Chattahoochee river opposite the above described island bounded on the east by the west bank of the river nearly opposite the seven (7) acre island at a black gum at or near a place known as Sell's corner; thence a straight line to a point where the lands owned in 1868 by Mrs. Freeman, Job Ross and James Campbell join, known there as the Ross and Freeman corner to a pine stake, thence a line to a branch near said stake, and thence in a line down said branch near said stake, and thence in a line down said branch

to said river, and thence down the western bank of the river to the beginning point containing sixty-five and 23-100 (65.23) one hundredths acres more or less lying and being in Chambers county of state of Alabama and being part of section twenty eight (28) and twenty nine (29) township twenty one (21), range twenty nine (29) as well as a forty (40) foot right of way from the factory bulding to a public road leading from West Point, Georgia to Beula, Alabama at any point where the Factory Company may locate it; including tenements and improvements, including the Cotton Mill and all the machinery therein or thereto belonging and all water privileges and riparian rights owned and enjoyed by the Alabama & Georgia Manufacturing Company. To have and to hold the said property together with all rights, members and appurtenances to the same belonging or in any wise appertaining unto it the said Galeton Cotton Mills and its assigns in as full and ample manner as the said Ala. & Ga. M'f'g Co. or any person holding under or through it might or could have enjoyed the same.

In testimony whereof the said L. Lanier, A. T. Dallas and Joseph T. Kirby, Trustees as aforesaid have hereunto set their hand and affixed their seals the day and year first above written.

A. T. DALLAS, L. S.
L. LANIER, L. S.
JOSEPH T. KIRBY, L. S.
Trustees.

Signed, sealed and delivered in presence of witness:
J. C. McKINZIE,
PHIL LANIER,
Notary Public.

Filed in office for record October 11th, 1892, and was duly recorded October 12th 1892.

J. J. ROBINSON,
Judge of Probate.

State of Alabama, Chambers County.

I, Lloyd Robertson, Judge of Probate Court, in and for said county, hereby certify that the foregoing is a true and correct copy of deed from L. Lanier, et als., Trustees of bondholders to Galeton Cotton Mills as recorded in vol. 22, page 460 of Record of Deeds.

Given under my hand and seal of office this June 9th, 1894.

(SEAL.) LLOYD ROBERTSON,
Judge of Probate.

Deed of Galeton Cotton Mills to Lanier, et al.

State of Georgia, Troup county.

This indenture made this 10th day of October in the year 1892, between the Galeton Cotton Mills, a corporation duly established under the laws of Alabama, and having a place of business at West Point, Georgia, of the one part, and L. Lanier of Chambers county, Alabama, and A. T. Dallas, of Troup county, Georgia, of the other part witnesseth: That on the 10th day of October, 1892, at a meeting regularly and duly called and held in the office of the said Galeton Cotton Mills, in West Point, Georgia, the stockholders of said corporation did by a unanimous vote, all the stock of the corporation being represented, authorize the board of directors of said corporation to issue bonds to the aggregate sum of sixty-five thousand dollars payable in gold coin to mature in five years bearing interest at the rate of eight per cent per annum payable semi-annually in gold coin, said bonds to be secured by a first mortgage on the entire plant, property, rights and franchises both present and future acquired of the Galeton Cotton Mills.

And whereas the said Galeton Cotton Mills has this day, through its legally constituted officers pursuant to the authority conferred in the aforesaid resolution, issued a series of one hundred and twenty bonds of the denomination of five hundred dollars each, and fifty of one hundred each, of like

tenor and date aggregating sixty-five thousand dollars, and numbered consecutively from one to one hundred and seventy inclusive, payable in gold coin of the United States of the present standard of weight and fineness at the bank of W. C. & L. Lanier, West Point, Georgia, on the first day of October, 1897, with interest on the same at the rate of eight per cent per annum payable semi-annually in like gold coin on the first day of April and October of each year at the bank of W. C. & L. Lanier, West Point, Georgia.

Now for and in consideration of the sum of five dollars by the said L. Lanier and A. T. Dallas, the trustees in said bonds named, to the said Galeton Cotton Mills paid at and before the sealing and delivery of these presents the receipt whereof is hereby acknowledged as well as for the better securing the payment of the aforesaid bonds aggregating sixty-five thousand dollars, and interest coupons thereto attached, the said Galeton Cotton Mills, hath granted, bargained and sold, and doth by these presents grant, bargain and sell to the said L. Lanier and A. T. Dallas, in trust for the holders of said bonds, the following described property, to wit:

All of a large Island in the Chattahoochee river designated as Island number six (6) containing one hundred and forty-three (143) acres more or less. Also a small Island number nine (9) containing seven (7) acres more or less. Also a small Island between Islands number nine (9) and number six (6) upon which the east end of the factory building rests, containing four (4) acres more or less, all of the above described Islands being in the twentieth district of Harris County, Georgia.

Also all that tract or parcel of land lying on the west side of the Chattahoochee river opposite the above described Island bounded on the east by the west bank of the river nearly opposite the seven (7) acre Island at a black gum or near a place known as Sell's corner; thence a straight line to a point where the lands owned in 1868 by Mrs. Freeman, Job Ross and James Campbell

then as the Ross and Freeman corner to a pine stake, thence a line to a branch near said stake, thence in a line down said branch to said river, and thence down the western bank of said river to the beginning point containing sixty-five and 23-100 (65.23) one hundredths acres more or less lying and being in Chambers county of the State of Alabama and being part of section twenty-eight (28) and twenty-nine (29). Township twenty-one (21), Range twenty-nine [29], as well as forty [40] foot right of way from the factory building to a public road leading from West Point, Georgia to Beulah, Alabama, at any point where the Factory Company may locate it including all tenements and improvements with the Cotton Mill. Also the following machinery, to wit: Three [3] Leffel Water Wheels, two [2] pumps, one [1] boiler, four pickers, sixty-six [66] cards, railway heads, drawing frames, slubbers, speeders, warpers, size kettles, slashes, looms, baling press and cloth room machinery, shafting, hangers, pulleys, and the entire equipment necessary for a cotton mill now owned and used by said Galeton Cotton Mills or that may be hereafter purchased and added thereto. Also all water privileges and riparian rights now owned and enjoyed by the said Galeton Cotton Mills or that may be hereafter acquired, with all the rights, members and appurtenances to said bargained premises belonging or in any wise appertaining.

To have and to hold said bargained property, machinery, rights and franchises to the said L. Lanier and A. T. Dallas in trust for the holders of the said bonds forever.

And the said Galeton Cotton Mills the said bargained premises, machinery and franchises unto the said L. Lanier and A. T. Dallas as trustees as aforesaid will warrant and forever defend against the claims of all other persons whatsoever.

It is hereby agreed that should the said Galeton Cotton Mills fail to pay any installment of interest on the aforesaid

bonds, for sixty (60) days after the same becomes due and payable according to the tenor of the interest coupons to said bonds attached then, in that event, the holders of said bonds may declare and treat the entire bonded debt as due as though said bonds had matured and the said L. Lanier and A. T. Dallas as trustees may proceed to sell the property herein mortgaged at public sale on the premises after having advertised the same for ten (10) days in some newspaper published in Atlanta, Georgia, and execute title to said property to the purchaser or purchasers at said sale and apply the proceeds of said sale to the payment of the expenses incident to said sale and the payment of the bonds herein mentioned and secured by this mortagage with all interest that may be due thereon and if there be a surplus or balance remaining after paying the principal and interest due to the bondholders in full, said surplus shall be paid over to the said Galeton Cotton Mills or its agent.

And to further protect the bondholders in case of loss by fire it is hereby agreed that insurance shall be placed on the property to the extent of the bonds with loss if any first payable to the holders of said bonds as their interest may appear.

The Galeton Cotton Mills hereby reserve the right to call in and pay off said bonds, or any part of them, at any time after giving sixty days notice, and in the event that only a part of said bonds shall be called at any one time they must be called in their regular order beginning with number one, and the interest on the bonds called in under the provisions of this clause of this mortgage shall cease after the expiration of the sixty days notice herein required, and the holders of the bonds so called in for payment and cancellation shall not be entitled to any interest after sixty days from the date of said notice.

Provided nevertheless that if the said Galeton Cotton Mills shall well and truly pay, or cause to be paid, unto said

bondholders, their heirs and assigns, the principal and interest of the debt secured by this mortgage at the time and place the same becomes due and payable, according to the tenor of said bonds and interest coupons thereto attached, then this mortgage as well as said bonds and interest coupons and the right to the property herein conveyed shall cease, determine and be void to all interest and purposes.

In testimony whereof the said Galeton Cotton Mills, by its legally constituted officers and agents has hereunto set its hand and affixed its seal the day and year first above written.

L. J. BLACKMAN, Sec. (L. S.)
L. LANIER, Pres. (L. S.)

Signed, sealed and delivered in presence of
PHIL LANIER, Not. Pub. (Seal.)
J. C. McKENZIE.

THE STATE OF ALABAMA, Chambers county, ss.

I hereby certify that this instrument was filed in my office for record, on the 11th day of Oct. 1892, and was duly recorded on the 12th day of Oct. 1892, in Vol. 46, page 1-3 of record of mortgages.

J. J. ROBINSON, Judge of probate, ($2.70).

GEORGIA, HARRIS COUNTY,.

Filed in office Oct. 14, 1892, 5 p. m. Recorded in record of deed Vol. P. page 289 Oct. 15, 1892.

A. F. TRUETT, C. S. C.

Amended Answer.

ALABAMA &c. M'F'G CO., ET AL., vs. J. J. ROBINSON, TRUSTEE, ET AL. } Petition &c. U. S. Circuit Court Northern District Georgia.

And now come the defendants and amend their answer and aver as follows:

The owners of the Galeton Cotton Mills state they did on the 10 day of October, 1892 assign and transfer to the

West Point M'f'g Co. all of the stock of said cotton mills in consideration of the sum of $16,600 dollars in cash paid and an agreement on part of the West Point M'f'g Co. to assume the mortgage debt of said Galeton Cotton Mills to the amount of 65,000 dollars and an agreement to pay the said annual interest to become due from time to time on said bonded debt.

After said Lanier, Dallas and Kirby had transferred the interest purchased by them as alleged in the answer to said Galeton Cotton Mills the said Cotton Mills executed and delivered to L. Lanier and A. T. Dallas a deed of trust covering all of said factory property for the purpose of securing the negotiable mortgage bonds of said Company to the amount of said $65,000 dollars and interest and said West Point M'f'g Co. assumed said debt and interest in consideration of the transfer of said stock as above alleged. Said West Point M'f'g Co. has paid the interest on said bonds as the same has accrued. Said bonds so issued are payable to bearer and some of them are in the hands of bona fide holders not parties to the original transactions referred to.

DORSEY, BREWSTER & HOWELL,
B. F. ABBOTT,
Defendant's Sols.

Order entering Mandate of Appellate Court and setting aside foreclosure.

In the Circuit Court of the United States, Northern District of Georgia. March term, 1892.

J. J. ROBINSON, ET AL., TRUSTEE, *vs.* ALA. & GA. M'F'G. CO. } Bill &c. Decree. Appeal. Mandate of reversal.

This cause having been carried by appeal to the Circuit Court of Appeals, and the decree of this Court reversed, it is now, on motion of defendant,

ORDERED: That the mandate from said Circuit Court of

Appeals be entered on the minutes of this Court, and the final decree of this Court in said cause, in accordance with said order of reversal, be set aside.

The question as to the affect of the sale of the property in controversy, and the rights of the purchasers and present holders thereof is reserved and will be disposed of by supplemental order.

In open Court, this 20th of June, 1894.

WM. T. NEWMAN, U. S. Judge.

Filing :—Filed in Clerk's Office, June 20th, 1894.

O. C. FULLER, Clerk.

Opinion of Court.

In the Circuit Court of the United States, Northern District of Georgia.

ALABAMA & GEORGIA MANUFACTURING CO., THE HUGULEY MANUFACTURING CO. *vs.* L. LANIER. } Motion for Restitution.

This is a motion for restitution of property sold under a decree of this court which was subsequently reversed. The sale was under a decree of foreclosure of a mortgage or deed of trust, at the suit of J. J. Robinson, Trustee, for certain bondholders, whose bonds were secured by the mortgage or deed of trust.

An appeal was allowed on motion of counsel who represented the defendant corporation in the foreclosure proceeding, on the 28th day of July, 1892. This appeal was not prosecuted and no supersedeas bond was given before the expiration of the time allowed by law for supersedeas. Subsequently to-wit: On November 21st, 1892, on motion of other counsel who came into the case, an appeal was allowed without supersedeas; the assignment of errors was filed and appeal bond for costs was given.

Between the allowance of the first and second appeal, the

property was advertised for sale and was sold by a commissioner appointed by the court, and the property purchased by L. Lanier and others, as trustees for the bondholders. Ten thousand dollars in cash was paid into the hands of the commissioner, being the amount required by the decree to be paid in cash, in the event the property should be purchased by the bondholders. The sale was on the first Tuesday in September, and on the 16th day of September, the sale was confirmed.

On the hearing in the Circuit Court of Appeals, the decree of this court was reversed. After the reversal and the receipt of the mandate to this court, of the appellate court, motion was made by counsel for the Huguley Company for restitution of the property sold as above set forth.

A question of considerable difficulty is presented by this motion, and it has been carefully and fully argued by counsel for the movants and for the purchasers, and has been fully and elaborately discussed in briefs furnished the court since the oral argument.

It is contended in the first place, that the ground upon which the right to reversal was placed by the appellate court, would not have been entertained by that court, if what had occurred in this court as to that matter, had appeared in the record. The difficulty about that is, that whatever may have occurred in this court, as to how far it may have operated as a waiver on the part of the defendant company to have an accounting of the bonds which came within the ruling of the court as to non-payment of interest coupons, it did not appear in the record and the appellate court knew nothing of it, and the judgment of that court was, that by the failure to have such accounting, the decree foreclosing the whole issue of the bonds was erroneous. So that the argument that that should influence the discretion of the court here in the matter of restitution, can not be considered. The judgment stands reversed and the reversal is just as effectual for the purposes

of the motion now under consideration, as if it had been upon the ground that the court erred in not allowing, as a matter of law, the three days of grace claimed by defendants in addition to the six months provided in the contract.

It is next claimed that the action of the Huguley Manufacturing Company and especially of its counsel of record and in court, was such in connection with the sale of the property, at the sale, and on the confirmation of the same, as to stop it from claim restitution of the property sold. Even if counsel for the Huguley Company could bind it by an express agreement that there should be no subsequent appeal and no subsequent effort to recover the property, no act is proven on the part of counsel which goes to this extent. The opinion of the leading counsel for the defendant, given at the sale or about the time of the sale, that the title acquired at the sale would be good, is no more than the opinion of any other lawyer as to the legal effect of the proceedings. His presence at the sale has no greater effect, and certainly his representation of certain bondholders, and acceptance for them of the amount due on their bonds, can not in any way operate as an estoppel against the Huguley Manufacturing Company. On the whole, I see nothing whatever in the facts set up here, which is sufficient to operate as an estoppel against the right of the Huguley Manufacturing Company to make and prosecute this motion for restitution.

The next and principal question is, as to how far the holders, at present, of this property are protected by the sale and the proceedings with reference to the property which occurred subsequently. It appears that after the purchase of the factory property by Lanier and others, as trustees for the bondholders, that certain bondholders were not willing to come into the scheme of reorganization which the bulk of the bondholders had assented to, and it was necessary to pay them in cash, the pro rata amount which their bonds would be entitled to, from the price realized at the sale. Then a

new corporation was organized called the Galeton Cotton Mills, and holders of bonds secured by the mortgage under which the property had been sold, were given stock in the new corporation, the total amount of such stock amounting to $65,000.00. Bonds for an equal amount were issued and delivered to such persons by the Galeton Cotton Mills. The stock was all transferred by the various holders of it to the West Point Manufacturing Company which appears to be now the holder of it.

The authorities are somewhat in conflict as to how far a sale by virtue of a judgment which is subsequently reversed, conveys title which will protect against a motion for restitution after reversal. It is contended here, and mainly on the authority of the case of *Marks vs. Cowles* 61 *Ala.*, 229 that not only will such restitution be ordered as between the parties to the case, and as against the plaintiff when he has purchased, but also as against the assignee of a party who purchases. It is contended and it is so held in the case named, that the party who purchases at such a sale, gets only a defeasable title, and can convey no greater title to the assignee than he himself obtains. The doctrine of this case would unquestionably require an order of restitution here. The correctness of the rule stated in that case is endorsed in *Freeman on Judgments*, Sec. 484. The question of the right to restitution of property when there has been a reversal of a judgment, by virtue of which a sale is made, has been several times before the Supreme Court of the United States. The last case to which attention has been called, or which has been found, is the case of *North Western Fuel Company vs. Brock* 139 *United States* 216 and while that was a case where it had been held that the Judgment was one which the Circuit Court had no jurisdiction to grant, still former decisions of the Supreme Court are cited and somewhat discussed. These cases, as well as the cited case by the Supreme Court, seem unquestionably to hold that restitution will be

granted on a reversal judgment as between the parties. The conclusion of the opinion is as follows:

"The same doctrine is sustained in the several state courts of the country, all recognizing the power of a court, whose judgment is set aside on its own motion or reversed by order of an appellate tribunal, to direct restitution, so far as practicable, of all property and rights which have been lost by the erroneous judgment." It is urged on behalf of the purchasers of this property, that where there has been a sale under an execution by a commissioner acting under a judgment valid and subsisting at the time, that a good and unassailable title is conveyed thereby to a party who purchases equally with strangers. The principal case relied on in the argument of this contention, is the case of *South Fork Canal Co., v. Gordon*, 2 *Abb.* 479—488, decided by Justice Field, and the case to which he refers and from which he quotes, of *Parker v. Anderson, 5 T. B. Monroe 455.* As to the case decided by Justice Field, it is replied that in *Galpin v. Page 18 Wall 350.* Justice Field in delivering the opinion of the court, by the language he used showed his own doubt as to the correctness of the views expressed in *South Fork Canal Co., v. Gordon supra.* An examination of the case shows this to be true, and it seems entirely clear that Justice Field did not intend to adhere to the views expressed by him in the South Fork Canal Company case. The other authorities are not in line with what appears to be the great weight of authority on the subject, indeed, with decisions of the Supreme Court of the United States which all seem to be to the effect that, as between parties, restitution will always be awarded where the judgment, by virtue of which sale was made, has been reversed. This ruling would unquestionably extend to such beneficiaries as bondholders who are represented in the proceedings by a trustee, where the bondholders are the purchasers. So it must be taken as established by undoubted authority, and indeed by controlling authority,

that restitution would necessarily be directed in this case as against the bondholders who originally purchased the property at the sale.

Now has there been such change in the title to the property as will protect it against restitution to the Huguley Manufacturing Company, the original owner. There would be no difficulty whatever, as to the Galeton Cotton Mills as it was originally organized, with the stock in the hands of the bondholders who purchased at the foreclosure sale. The real trouble is that the holding of the stock is changed from these parties to the West Point Manufacturing Company. The West Point Company is not a party here, but the fact of the transfer of the stock has been put in evidence on the hearing of this motion by the Galeton Cotton Mills for the purpose of showing that its stock had gone into other hands, and that the parties to this case are not the real owners of the stock and consequently of the property. L. Lanier appears by the evidence to be the president of the Galeton Cotton Mills, and secretary and treasurer and active official, so far as this transaction is concerned, of the West Point Manufacturing Company. He was also the principal member of the purchasing committee for the bondholders, and he was quite a large holder also of the stock of the West Point Company. It can not be said, therefore, that there is such alienation of this property to a stranger, to one new to the transaction, as would make it necessary to go into this case, to the extent that the Supreme Court of Alabama went in the case of *Marks V. Cowles, supra.* But the truth seems to be, as is urged, that L. Lanier who was the principal acting in the purchase, was in all subsequent transactions the representative of buyer and seller of assignor and assignee. I am not prepared to take issue with the doctrine of Marks vs. Cowles, supra, but if it is necessary in the opinion of the court to invoke it in this case, as under the peculiar facts shown here, while restitution will involve some complications and some

difficulty, perhaps, in its practical enforcement, I feel it my duty, upon the repayment of the cash paid by the purchasers, to direct it. Before any order is made in the matter, however, it will be necessary probably, to hear counsel as to its terms and conditions. It may be proper to add that in the opinion of the appellate court directing a reversal of this case, this language is used: "It is obvious that there was such substantial error in that finding as must, on appeal, vitiate all subsequent proceedings." The record in the appellate court showed the sale and the confirmation of the sale and the language used clearly indicates that the proceedings up to the time of the purchase by Lanier and others as representatives of the bondholders, in the opinion of that court was annulled by its judgment of reversal.

This September 14th, 1894.

WM. T. NEWMAN, U. S. Judge.

Filed in clerk's office this 14th day of September, 1894.

O. C. FULLER, Clerk.

By GEO. S. BARNARD, Deputy Clerk.

Motion of Huguley M'f'g. Co. and order overruling same.

In the Circuit Court of the United States, Northern District of Georgia.

J. J. ROBINSON, TRUSTEE, ETC., *vs.* HUGULEY M'F'G COMPANY ET AL. } Motion for restitution by the Huguley Manufacturing Company, et al.

Now comes the said Huguley Mfg Co., and moves the court that it be referred to the Standing Master in Chancery of this court, or such other person as the court may appoint to act as Master, to hear evidence and report to this court the reasonable value of the use and occupation of the property involved in this suit, and of which the bondholders were put in possession under the sale made pursuant to the former decree of this court, which was subsequently reversed on the appeal of the Huguley Manufacturing Co., et al.

Said petitioner further moves the court to direct said Master to take and state said account concurrently with the taking and stating of the account of the mortgage debt and the amount of the bonds upon which the interest has been unpaid as heretofore directed by an order of reference of this cause, made and entered on this day; and that said Master be required to report upon all of said matters concurrently at such time as the court may direct. And petitioners pray that an order for said reference is prayed to be made without requiring, as a condition precedent, that they pay into this court, the sum of money heretofore paid into this court on the purchase of the property as aforesaid.

Petitioners further move the court to vacate and set aside so much of the decree relating to the restitution this day made in the above entitled cause, as requires these petitioners to pay into this court, as a condition precedent to restitution, the sum heretofore paid into this court by L. Lanier, A. T. Dallas and J. T. Kirby upon their purchase of the property under the decree of sale heretofore made in this cause.

These motions are made on the following grounds:

1. That this court can not legally require the payment of said sum as a condition precedent to restitution or the taking of the accounts of rents and profits.

2. That a part of said sum was paid in to be applied to the expenses of the sale under said decree, and that said decree having been reversed, this court can not legally require these petitioners as a condition precedent to restitution or to said accounting to pay the costs incurred in the matter of said sale.

3. Because a part of said money was applied by the complainants to the purchase of bonds held by D. Jannopoulo and Mrs. Sallie Huguley, and this court cannot legally require petitioners to refund said sum as a condition precedent to restitution, and said petitioners submit on the hearing of these motions the former decree of this court ordering said sum to

be paid into this court, (the same being the final decree heretofore rendered and which was reversed) and the petition of said Lanier, Dallas and others as a committee of bondholders setting forth their purchase and praying confirmation, and the report of A. E. Buck heretofore filed in this cause showing the disposition made of said sum of money by him as commissioner.

Said complainants also move the court to set aside and vacate so much of the decretal order made this day in this cause as requires the payment in court or reimbursement of said sum of money hereinbefore referred to as a condition precedent to the taking by the Master of an account of the rents and profits for the value of the use and occupation of the property involved in this litigation while in the hands of the purchasing bondholders, upon the same grounds hereinbefore noted, and they submit on this motion the same evidence as above set forth in this motion. And petition also submits on the sworn petition for restitution and the answer thereto.

J. M. CHILTON,
BIGBY, REED, BERRY & FOOT,
ALLEN FORTE,
Solicitors for Petitioners.

Order Denying Petition.

The above and foregoing petition is denied on each and all of the grounds as set forth therein.

This September 22d, 1894.

WM. T. NEWMAN, U. S. Judge.

Filing:—Filed in clerk's office Sept. 22, 1894.

O. C. FULLER, Clerk.

Order on motion for restitution, etc.

J J. ROBINSON, TRUSTEE,

versus

ALABAMA & GEORGIA M'F'G CO., ET AL.

Petition for Restitution of property by Defendants in Circuit Court U. S. N. Dis. Ga.

The matter of framing the proper order of decree under the opinion of this court of file in the matter of restitution, came on to be heard by the court and after argument of counsel thereon on the various aspects of said matter as suggested by counsel, and on consideration thereof it is considered ordered and decreed.

1. That the motion of defendants that they have restitution of the property described in the petition and which was sold under the decree of this court as shown by the record, be granted on condition they deposit with the registry of this court within thirty days from this date the sum of ten thousand dollars—the same being the sum paid into the court by L. Lanier, A. T. Dallas and J. T. Kirby the purchasers of said property.

2. The motion of said defendants the Huguley M'f'g Co. et al. to refer the question of mesne profits arising from the use and operation of the property since the sale in connection with the amount to be paid into court as a condition to restitution in order that the one may be offset against the other in court shall appear that mesne profits have accrued is denied.

3. The motion of counsel for complainants, that the condition of restitution should be that defendants asking restitution should give bond and security that the property on a resale should bring as much as it sold for at the first sale is also denied.

Sept. 22d, 1894. WM. T. NEWMAN, U. S. Judge.

Filing: —Filed in clerk's office Sept. 22, 1894.

O. C. FULLER, Clerk.

Order reference to Julius L. Brown, Esq., Standing Master in Chancery.

In the Circuit Court of the United States, Northern District of Georgia.

J. J. ROBINSON, TRUSTEE, *vs.* ALA. & GA. M'F'G CO., ET AL. } Bill for foreclosure.

It is ordered by the court that in accordance with the judgment of the Court of Appeals, reversing the decree of this court in said cause, that said cause be referred to the standing master in chancery of this court, Julius L. Brown, Esq., to report to this court forthwith, the amount of principal and interest due on the bonds secured by the trust deed in said cause sought to be foreclosed, and which of said bonds were due under the judgment of the Court of Appeals and the holder of such bonds. The evidence having been taken in the cause, and is of file in this court, the same is referred to said master, with the right to hear any other and further evidence on that question, necessary to determine the same, if the evidence already taken is not sufficient.

This 22nd day of September, 1894.

WM. T. NEWMAN, U. S. Judge.

Filing.—Filed in clerk's office 22nd day of September, 1894.

O. C. FULLER, Clerk.

By GEO. S. BARNARD, Deputy Clerk.

Order referring question as to rents, profits to Julius L. Brown, Esq., Standing Master.

In the Circuit Court of the United States, Northern District of Georgia.

J. J. ROBINSON, TRUSTEE, *vs.* ALA. & GA. M'F'G. CO., ET AL. } Bill of foreclosure.

It is hereby ordered that the petition of file in the above stated case, claiming rents, issues and profits, be referred to

Julius L. Brown, Esq., standing master in chancery, and that he hear evidence and report upon the same.

This order is not to take effect until petitioners comply with the judgment of the court by reimbursing the purchasers of said property in such amount as the courts may by its order hereafter determine.

The granting of this order is not a waiver by said petitioners of their right to contest in every way the requirement of the court that they make the reimbursement mentioned above.

This 22nd September, 1894.

WM. T. NEWMAN, U. S. Judge.

Filing—Filed in clerk's office 22nd day of Sept., 1894.

O. C. FULLER, Clerk.
By GEO. S. BARNARD, Deputy Clerk.

Order revoking order referring matters of rents, etc., to Julius L. Brown, Standing Master.

The following order passed this day to-wit:

In the Circuit Court of the United States, Northern District of Georgia.

J. J. ROBINSON, TRUSTEE, *versus* ALA. & GA. M'F'G. CO. ET AL.	In equity. Bill for foreclosure, &c.

It is hereby ordered that the petition of file in the above stated case, claiming rents, issues and profits, be referred to Julius L. Brown, Esq., standing master in chancery, and that he hear evidence and report upon the same.

This order is not to take effect until petitioners comply with the judgment of the court by reimbursing the purchasers of said property in such amount as the court may, by its order hereafter determine.

The granting of this order is not a waiver by said petitioners of their right to contest in every way the requirement of

the court that they make the reimbursement mentioned above.

This 22nd September, 1894.

WM. T. NEWMAN, U. S. Judge.

Is hereby revoked and set aside, the subject matter being covered by other orders.

This September 22d, 1894.

WM. T. NEWMAN, U. S. Judge.

Filing:—Filed in clerk's office Sept. 22, 1894.

O. C. FULLER, Clerk.

Motion to amend order of reference.

In the Circuit Court of the United States, Northern District of Georgia.

J. J. ROBINSON, TRUSTEE,
vs.
ALABAMA & GEORGIA M'F'G CO. ET AL. } In Equity.

The above stated cause having been referred to Julius L. Brown, Esq., standing master in chancery, to take an account, etc., under order of this court, and it being represented that said order of reference is indefinite as to what matters are referred to said master, the plaintiff now moves to amend the order of reference so that the master shall pass on and report to the court, the following questions:

1. How many of the holders of the bonds of the Alabama & Georgia M'f'g Co., and on what bonds was the interest paid and accepted after default before the filing of the bill?

2. How many and who are the owners of the bonds which on interest remain unpaid after default and before the filing of the bill?

3. The master will report the amount of the principal and interest remaining unpaid on each class of said bonds, and on each bond up to the date of making and filing his report. He will also report the names of the holders of said bonds, as well as the amount of the principal and interest remaining unpaid on the same.

Plaintiff prays that rule nisi issue requiring defendants to show cause on Saturday the 20th instant at 10 o'clock a. m. why said order should not be amended as herein set forth.

DORSEY, BREWSTER & HOWELL,
B. F. ABBOTT,
Sols. for plaintiffs.

Order.

It is ordered that defendants show cause before me at 10 o'clock a. m., on Saturday the 20th instant, why the order of reference mentioned in the foregoing motion should not be amended as therein prayed for. Let defendants on their counsel be served.

This 18th October, 1894.

WM. T. NEWMAN, United States Judge.

Filing:—Filed in office Oct., 1894.

O. C. FULLER, Clerk.

Service.

I hereby acknowledge service of the within order, receiving copy of the same.

This October 19th, 1894.

JOHN C. REED, Solicitor for Defendants.

Answer to Rule Nisi.

J. J. ROBINSON, TRUSTEE, *vs.* ALA. & GA. M'F'G. CO. } Motion to amend order of reference.

Defendants in answer to the rule nisi say: The order of reference is correct as it now stands.

Should however the court decide that said order of reference is uncertain in any respects, it ought to be corrected so as to conform to the opinion of the court of appeals; and especially that the master shall further report the fact, nature and extent of any default constituting a breach of the condition of the mortgage which said bill is filed to foreclose; and also that he shall take the account prayed for in the bill.

Defendants pray that said order, if modified at all, be modified according to the suggestions made in this answer.

JOHN M. CHILTON.
ALLEN FORT.
JOHN C. REED.

Filing.—Filed in clerk's office Oct. 20th, 1894.

O. C. FULLER, Clerk.

Order amending order of reference.

In the Circuit Court U. S. Northern District of Georgia.

J. J. ROBINSON, TRUSTEE, vs. ALA. & GEO. M'F'G CO., ET AL. } In equity motion to amend of reference to Master.

On hearing and considering the above stated motion it is ordered that said original order of reference be amended so that Julius L. Brown, Esq., as Master, shall pass on and report to this court on the following questions:

1. On how many of the bonds of the Alabama & Georgia M'f'g Company was interest paid and accepted by the holders thereof after default, before the filing of the bill and who at the time of taking the account are the holders thereof.

2. On how many bonds was the interest unpaid after default and before the filing of the bill and who are the holders thereof at the time of taking the account.

3. The said Master will report the principal and interest remaining unpaid at the time he is directed to take the account of both classes of said bonds, with the names of the holders, the amount of principal and interest to be stated separately.

4. The evidence already taken will be used by said Master so far as the same is pertinent on the question of payments of principal and interest remaining unpaid and as to the question of ownership of said bonds. If such evidence is not sufficient when taken in connection with the record of the cause (which is hereby referred to said Master) then he will hear any additional evidence which may be pertinent in the ascertainment of the facts referred to him.

5. The prayer of the defendants submitted in their answers to the rule nisi said answer being filed this day is denied.

This October 20, 1894. In open court.

WM. T. NEWMAN, U. S. Judge.

Filing.—Filed in clerk's office Oct. 20, 1894.

O. C. FULLER, Clerk.

Report of Julius L. Brown Master in Chancery.

OFFICE OF MASTER IN CHANCERY,
U. S. CIRCUIT COURT, N. D. GA.
ATLANTA, GA., October 2d, 1894.

J. J. ROBINSON, TRUSTEE, *vs.* ALA. & GA. M'F'G CO., ET AL. } No.——In Equity. In the U. S. Circuit Court, N. Dist. of Ga.

In pursuance of the authority and directions contained in an order of reference made in the above stated cause on the 22nd day of September, 1894, concerning the matters therein stated, I shall consider the matters referred to me at my office, in the city of Atlanta, Ga., on the 4th day of October, 1894, at the hour of 10:30 o'clock, a. m., and I shall continue said consideration from day to day so long as it may be necessary. All parties concerned are hereby notified to be present. Hereof fail not at your peril.

JULIUS L. BROWN.

Master in Chancery U. S. Circuit Court, Northern District, Ga.

Adjourned until Monday, October 8, at 11 a. m.

Oct. 8, '94, adjourned until Oct. 15, '94.

Oct. 16, '94, adjourned until Oct. 22, '94.

Oct. 22, '94, adjourned until Oct. 23, '94.

November 14, exceptions filed to draft of report.

November 15, '94, exceptions overruled.

Service.

Due and legal service of notice acknowledged. Copy hereof, and all other service waived. This 2nd, day of Oct., 1894.

JOHN C. REED.
B. F. ABBOTT.

J. J. ROBINSON, TRUSTEE, *vs.* THE ALA. & GA. M'F'G CO. ET AL. } No. 360. In equity: U. S. Cir. Court N. Dis. of Ga. Oct. Term, 1892.

By virtue of the authority and directions contained in the order of reference made in the above stated cause on the 22nd day of September, 1894, and in pursuance of the notice given the master proceeded on the 4th day of October, 1894, to consider said matters.

Their appeared for the complainants, B. F. Abbott and for the respondents Jno. C. Reed as solicitors.

The master stated that he desired to expedite the cause as much as possible and called this meeting more to confer with the counsel as to the time that would be suitable for them to proceed with the cause rather than to go to work now.

After considering the matter, reading the opinion and considering the matters referred the master stated that he would here whatever evidence there might be submitted on either side to show whether the interest was paid on the bonds and whether the bonds so showed the interest or not by having the coupons annexed to them or by having them detached.

Upon suggestion of solicitors the master adjourned the hearing until Monday, October the 8th.

Upon said day upon motion of solicitors said hearing was adjourned until October 15th. Afterwards the master adjourned said hearing until October 16th, 1894.

J. J. ROBINSON, TRUSTEE, vs. ALA. & GA. M'F'G. CO., ET AL. } No. 360 U. S. Circuit Court. Northern District of Georgia: October Term, 1892.

Hon. Julius L. Brown, Master in Chancery presiding.

Appearances for Complainant: Col. B. F. Brewster and Col. B. F. Abbott.

Appearances for defendants: Col. Allen Fort and Col. Jno. C. Reed.

Stenographer: G. T. Osborn, Esq.

Hearing, Tuesday, October 16th, 1894.

After reading aloud the order of reference the court said: It seems to me that the sole question for me to decide under this order, is to look after the interest on the bonds what had been and what had not been paid.

Col. Reed:—We wish to show by evidence that the Huguley Manufacturing Company had money in the hands of W. H. Huguley & Company the office of the Company, to pay the interest on these bonds; and that they were the agents of the Alabama & Georgia M'f'g Co., and that if demand had been made there, the interest would have been paid. We want to offer evidence to show that that was the office of the Company and that we had funds there to pay this interest and if they had been presented there, the proper place, that they would have been paid as we had more than enough to pay them.

In a word we want to offer evidence to show that at the place and at the time for payment of the interest, we had funds there to pay it, and if any demand had been made we would have paid the interest, but that no demand was made at the place.

After considerable discussion on this point pro and con, the court ruled:—

I understand you want to offer testimony that the place where this interest was payable was the office of Huguley & Co., that it was the office of the Alabama & Georgia M'f'g

Co., and that you had funds there and that it was there for the purpose of paying the interest and that there was no demand made for the same.

Gentlemen I will hear evidence as to where the office of the company was and also as to the money being there for the purposes named.

Col. Reed then stated that they did not have the witnesses present but would have them at the next sitting of the court. This was agreed to.

Col. Fort. We would like to have a ruling on another point of evidence as it is very expensive to bring the witnesses here. We want to show that the Galeton Cotton Mills are bondholders and beneficiaries of this suit and that they have taken wrongful possession of this property since the suit was begun, and that they have enjoyed large rents and profits, to-wit $75,000.

Court. Where was the title at the time of this suit?

Fort. In these same people—Laniers and their associates. We wish also to show that they have removed machinery and committed wastes to the amount of $25,000. We wish to show this by expert witnesses that we will produce before the court.

After further discussion the court ruled. I don't understand that is referred to me under this order of reference.

Fort. We want to save the point. Exception noted.

Court. What I understand you to tender evidence on is that the men in possession were beneficiaries at the time and that they have gotten more out of it than the interest and therefore you don't owe any?

Yes, sir.

Court. I don't understand that I have anything to do with that.

Fort. Please note our exceptions, Mr. Stenographer.

Court adjourned on Monday, Oct. 22nd, 94, 2.30 o'clock.

Monday, October 22nd, 1894, 2.30 o'clock, court met pursuant to adjournment.

Present, Cols. Brewster, Abbott, Fort, Reed and G. T. Osborn, Stenographer.

Col. Abbott read to the court an amended order obtained since the last sitting of the court.

The court said I stated and ruled at the last sitting that I would hear all evidence, showing the nature of the default, and whether or not the defendant corporation, had money at the time and place of the payment as stated in the coupons in the bonds, but since the amended order this day taken has been read to me, I will reverse said ruling and will not hear evidence tendered upon said subject, as I do not feel that under the terms of this order I have the right to hear the same."

To this ruling the defendants through their solicitors Messrs. Fort and Reed made an exception and asked that the same be noted.

The court then asked the solicitors to please specify any parts of the evidence in the record that they would like to have him examine especially as bearing upon the points, as they were more familiar with the case.

Acting on this suggestion Col. Abbot said, I wish to call your honor's attention to the testimony of W. C. and L. Lanier pages 54 and 69 in the printed volume. D. Jannopoulo, 107, 133-139. Answer Huguley Manufacturing Co., page 17. The amended answer page 27. Buck's report, which is of file, also the bonds which are in the clerk's office except $6,000.

Court. Can't you gentlemen agree about the facts as to those bonds?

Abbott. Those bonds were of file in the clerk's office. Col. Hammond represents Mrs. Sallie Huguley and she owned $6,000 of bonds and as her attorney of record he claimed the right to withdraw those bonds to collect something that was due on them. He withdrew them and turned them over to his client. His fee was paid and he was dis-

charged from the case. She has since married and lives in Gadsden, Ala. The interest on those bonds were paid after the default. Buck's report shows about those bonds.

Brewster. The record fails to show who were the owners of part of the bonds. I don't think the record discloses it at all and we want to offer evidence on that line.

Court. The original order asked me to state to whom they belong.

It was stated that the bonds were not registered bonds.

Court. Is there anything you gentlemen wish to offer in addition?

Col. Reed. We don't think of any evidence that we want to offer except what we have already offered and what is in the record.

L. Lanier sworn for Complainants.

Direct examination by Col. Brewster.

Q. You are familiar with that report (handing witness Buck's report)?

A. Yes, sir, I am.

Q. I will get you to state to whom the bonds belong that are put down to L. Lanier.

The first here, $15,000 marked L. Lanier are from Mrs. L. Lanier guardian for Miss Susie Huguley.

The second $8,000, L. Lanier represent Mrs. L. Yancey as agent.

Q. They were hers then?

A. They were hers.

Q. Are those the number of bonds Mrs. Lanier owned as guardian that you have called?

A. Yes, sir, we got these from the bonds.

Q. It is the proper number?

A. Yes, sir.

Q. Are the proper numbers mentioned in the case of Mrs. Lanier as agent of Miss Yancey?

A. Same way. They are the proper numbers.

Q. You can go along with the rest stating if they are the proper ones which the record shows there?

A. Well, I would say that A. T. Dallas, $5,000 are numbered correctly. The $15,000 Mrs. Lanier guardian for Susie Hugnley are numbered as follows, 37 to 66 inclusive. The Miss L. Yancy bonds are numbered 21 to 36 inclusive. The A. T. Dallas bonds $5,000, 89 to 98 inclusive. E. J. Nolan bonds, $3,000, 105 to 110 inclusive. These are $500 bonds.

Court. All the bonds are $500 bonds?

A. Yes, sir. Mrs. Hackney $2,000 and L. J. Blackburn $1,000 of bonds called together, because down here that way, from 11 to 14 inclusive and 7 and 8. It stands here 7 and 8. I don't like to swear by this report as it is a copy, but there are two bonds. L. D. Hutchison $3,000 of bonds, 99 to 104 inclusive. Miss Julia A. Walker $2,000, numbers 5, 6, 15 and 16.

Q. She is not now the owner of those bonds?

A. No, sir; she died and they were divided among the heirs of that estate.

Q. Do you know who the heirs are?

A. They are Hackney, Blackburn, A. D. Moore, Lou E. Kirby and Mrs. C. Hardy.

Mrs. A. D. Moore, $2,000, from 1 to 4 inclusive; Mrs. Lou E. Kirby, $2,000, 17 to 20 inclusive; G. A. Huguley, $1,000, 9 to 10 inclusive; Atlanta National Bank, $2,000, 125 to 128 inclusive; G. A. Huguley, $1,500, 119, 120, 121. J. F. Hooper, $1,500, 122 to 124 inclusive. L. Lanier, $1,500, 81 to 83 inclusive; L. Lanier, $1,500, 77, 87, 88.

Q. Were these yours individually?

A. Yes, sir. Lula A. Elliott, $1,500, 84, 85 and 86; J. E. Elliott, $2,000, 76, 79, 78, 80; Mrs. S. Elliott, $500, 75; J. H. Huguley, $2,000, 111 and 114; Mrs. S. H. Huguley, now Mrs. S. H. Kyle, of Gadsden, Ala., $6,000: 67 to 74 inclusive and 115 to 118. Now I don't know who owns

$1,000, standing in the name of L. Lanier. These were sent down to our office from St. Louis for collection.

Q. Who collected the money on the distribution?

A. It was paid to the Trust Company here. It belonged to some lady in St. Louis. It was a $1,000, bonds numbered 129, 130, known as the Jannopoulo bonds. Now there were four coupons of $20 each belonging to W. C. & L. Lanier.

Q. Can you give bonds on which interest was not paid in July '90 and that were not paid by the first of July, '91?

A. If you will give me the list I can.

Q. Just the numbers or perhaps the owners that would be easier.

A. I would say Lanier guardian, $15,000, numbers heretofore given; Mrs. L. Yancy, $8,000, numbers given; A. T. Dallas, $5,000, numbers given; E. J. Nolan, $3,000, same numbers as given; Hackney & Blackburn, $3,000, numbers as given; L. D. Hutchison, $3,000, numbers given; Julia A. Walker, and her heirs same numbers given, $2,000; Mrs. A. D. Moore, $2,000, same numbers as given; Mrs. Lula E. Kirby, $2,000, same numbers given; G. A. Huguley, $1,000, with same numbers given; Atlanta National Bank, $2,000, same numbers given. These are the bonds that were in default.

Q. Can you give those not in default?

A. I expect, before the filing of the bill. G. A. Huguley, $1,500, with numbers given; J. F. Hooper, $1,500, with the numbers given; L. Lanier, $1,500, numbers given; L. Lanier, $1,500, numbers given. Those two of $1,500 each belonged to another person at the time of this suit.

Q. Who was the person?

A. Belonged to W. D. Elliott and another Mr. Elliott whose name I have forgotten.

Q. Who do they belong to now?

A. They belong to L. Lanier, Lula A. Elliott, $1,500, with numbers given; J. E. Elliott, $2,000, with numbers

given; Mrs. S. Elliott, $500, with numbers given; Mrs. S. H. Huguley, (now Kyle) $6,000, with numbers given; Two bonds, $1,000 with the numbers given belonging to some lady in St. Louis, whose name I don't know. Those are the bonds known as the Jannopoulo bonds. I know that is $46,000 of matured bonds that were in default and four coupons (detached) of $80.00.

Q. To which did they belong?

A. I think they belong to the bonds of G. A. Huguley, Nos. 9 and 10. I think those were the bonds, I am not certain.

Q. The bonds will show that they were detached?

A. Yes, sir.

Q. Are they pinned back to the bonds?

A. I left them pinned loose, when this schedule was made up. This shows $46,000 of bonds in default.

Q. How came them cut off?

A. They were bonds belonging to the heirs of Mrs. Julia Walker and sold to W. C. & L. Lanier.

Q. Are there any of the other bonds that show detached coupons?

A. There may be but there are pinned to the bonds.

Q. I will ask you about the Atlanta National Banks bonds? Will the July coupons appear on their bonds?

A. In the case of the Atlanta National Bank bonds, those people in some way took cash on July '90. I don't think we pinned those to the bonds.

Q. You don't know whether that was before or after the filing of the bill?

A. No, sir. I don't know.

Fort. We want to refer to the testimony of Jannopoulo and Romare that they had in their hands the coupons of July were not in default.

Court. Examine the witness now.

Col. Reed. You spoke of certain bonds belonging to Mrs.

Walker and you say she died and that these bonds have been distributed among certain of her heirs?

A. Yes, sir.

Q. How do you know that?

A. I know she died.

Q. Do you know anything about the estate or have anything to do with the management of the estate?

A. No, Judge Denson was administrator of the estate.

Q. You have only been informed of the distribution?

A. Yes, sir; I know that Mrs. Hardy had $500 of the bonds.

Q. You know that each of the other heirs got a part of the bonds?

A. I think a $1,000 of it was G. A. Huguley, which was in default.

Q. How do you know of your own knowledge that the heirs got these bonds?

A. Mrs. G. A. Huguley two bonds. Mrs. Hardy got one of them and I think that the other $500 was divided among the heirs but don't know about that.

Q. You have used the expression two or three times that certain bonds were in default, what do you mean by that?

A. Interest not paid.

Q. How do you know that as to these bonds?

A. Because we had the bonds before us at the time with the coupons on them.

Q. You mean all the $46,000?

A. $46,000 counting the Atlanta National Bank bonds.

Q. You didn't have them?

A. At this accounting we had them.

Q. You mean you were present at the Buck examination?

A. Yes, sir.

Q. You mean you are testifying about what you saw then?

A. Yes, sir.

Q. Do you know whether or not any interest has been paid on any of the bonds of your own knowledge up to the time of this order?

A. I know that they had not been paid on any of these I have testified about.

Q. How do you know that?

A. There were that many of them in my possession.

Q. You had all these in your possession?

A. All except the Atlanta National Bank's. These were placed in the hands of Mr. Buck at time of the settlement.

Q. Now at the time of the maturity of these bonds you had all of them in your possession, with the exception of the Atlanta National bonds?

A. No, sir, I did not say that. I did not say that I had all of them at the time but subsequently I did.

Q. Lets go slow. At the maturity of the coupons where were the bonds?

A. A great many of them were in our vaults at home.

Q. All of them?

A. No, not all of the $46,000.

Q. How many not, $1,000?

A. Perhaps so.

Q. At the maturity of the coupons you did not have all of them?

A. No, sir; not on the first day of July, '90, afterwards.

Q. After that they were all put in your possession. How do you know that the interest had not been paid?

A. Because the coupons were there.

Q. The coupons still on them?

A. Yes, sir.

Q. You mean that the coupons were on all the bonds after you got them in your possession?

A. Yes, sir.

Q. What were you doing with the bonds, how did they get in your possession?

A. My wife as guardian kept her bonds there. W. C. and L. Lanier, Yancy, Hutchison, and Nolan. Not certain about Hutchison.

Q. You are not certain about Hutchison?

A. No, sir.

Q. Or about Nolan?

A. I am.

Q. Didn't the Atlanta National Bank have funds in its hands on the first day of July to pay this interest?

Objected to.

After argument pro and con, objection withdrawn.

Q. I want to know if the Atlanta National Bank didn't have funds in its hands to pay themselves this interest on their bonds the first of July?

A. I don't know. The President told me he didn't have.

It was objected that all this kind of evidence was in the record.

It was agreed that it go out. That is about the Atlanta National Bank.

Court: Any other testimony?

Brewster: That is all that I know that is lacking to complete the record.

The Court: I will let in evidence to show that the Bank had money there to pay its own debt.

The Master adjourned the hearing until October the 23rd.

Col. B. F. Abbott, one of the solicitors for complainants, stated that it might be entered upon the record that the Atlanta National Bank, after default, received interest on its coupons, No. 13.

J. J. ROBINSON, TRUSTEE, *vs.* ALA. & GEO. M'F'G CO., ET AL. } No. 360, in Equity in U. S. Circuit Court, Northern District of Georgia.

The defendants in said case having been furnished by Julius L. Brown, Esq., Master in Chancery, with a draft of

his report in said case before said report is filed, now file before said Master the following exceptions to his report:

1. As stated in said report the solicitors for respondents tendered before said Master evidence to show that the Huguley Manufacturing Company had money in the hands of W. H. Huguley & Co. at the office of the company to pay the interest on the bonds, that said W. H. Huguley & Co. were the agents of the Ala. & Ga. Mfg Co., and if demand had been made there, the interest would have been paid; and further evidence to show that that was the office of the company, that there were funds at that place to pay interest, and if the bonds had been presented there, which was the proper place, they would have been paid, as said W. H. Huguley & Co. had in hand more than funds enough to pay them, and that no demand was made at the place; and the Master ruled as is stated in said report that he would hear evidence as to where the office of the company was, and also as to the money being there for the purpose named; and afterwards, as appears in said report, said Master reversed the ruling hereinbefore set out, and decided he would not hear the evidence tendered upon the subject:

To this ruling of the Master that he would not hear the evidence aforesaid, the defendant excepts, contending that said Master erred in making the same, and that he ought to have admitted and considered said evidence, as said evidence was legal and relevant, and authorized by the mandate and judgment of the Court of Appeals in said case, and by the pleadings and the orders of reference.

2. As is stated in said report, the respondent's solicitors tendered evidence before said Master to show that the Galeton Cotton Mills are bondholders and beneficiaries of this suit, that they have taken wrongful possession of this property in controversy, since the suit was commenced, and that they have enjoyed large rents and profits, to-wit, $75,000; that they have removed machinery and committed waste to

the amount of $25,000, the same to be shown by expert witnesses; and the Master ruled that he would not hear the evidence:

To this last mentioned ruling, the defendants except, and say that the Master erred in making the same, as said evidence was legal, relevant, and authorized by the orders of reference, and the mandate and opinion of the Court of Appeals and the pleadings in said case, and for the further reason that the matter to which said evidence was offered belonged to the accounting which the Master was directed to take.

JOHN M. CHILTON,
ALLEN FORT,
JOHN C. REED,
Solicitors for Defendants.

The above and foregoing exceptions to the draft of my report are hereby overruled, and I hereby settle the form of said report and make the same to the court.

JULIUS M. BROWN, Master in Chancery.

This November 15, 1894.

Report of Julius L. Brown, Master in Chancery.

J. J. ROBINSON, TRUSTEE, *vs.* THE ALA. & GA. M'F'G CO. ET AL. } No. 360. In equity: U. S. Cir. Court N. Dis. of Ga.

In obedience to the order of reference made in the above stated cause, passed on the 22nd day of September, 1894, directing me "to report to this court forth with, the amount of principal and interest due on the bonds secured by the trust deed in said cause, sought to be foreclosed, and which of said bonds were due under the judgment of the Court of Appeals, and the holder of such bonds."

I consulted the convenience of the Solicitor for the parties, and set the hearing for the 4th day of October, 1894, and from said date to suit their convenience, have continued the same from day to day until this date.

Upon the hearing on October 8th, 1894, I ruled that I would hear any evidence submitted that would show whether interest was paid or not, regardless of whether the bond so showed or not.

Upon the hearing had October 16th, 1894, Solicitor for complainant waiving the production of the witnesses to save expense of bringing them needlessly, should they not be needed, and consenting that the points be decided as though the witnesses were present.

Respondents Solicitors tendered evidence as follows: "We wish to show by evidence that the Huguley Manufacturing Company had money in the hands of W. H. Huguley & Co., the office of the Company to pay the interest on these bonds, and that they were the agents of the Alabama & Georgia Manufacturing Company, and that if demand had been made there, the interest would have been paid. We want to offer evidence to show that was the office of the Company, and that we had bonds there to pay this interest, and if they had been presented there, the proper place, that they would have been paid, as we had more than enough to pay them. In a word, we want to offer evidence to show that at the place and the time for the payment of the interest, we had bonds there to pay it, and if any demand had been made, we would have paid the interest, but that no demand was made at the place.

Construing the order of reference to me to mean, that I was to consider the whole opinion of the Court of Appeals in said case, I based my ruling upon the following words in that decision, 56 Fed. Rep. 693.

"What is indispensable in a decree of foreclosure and sale such as asked in this case, and which the decree appealed from purporting to grant, 'is that there should be declared the fact nature and extent of the default which constituted the breach of the conditions of the mortgage and which justified the complainant in bringing his bill to foreclose it, and

the amount due on account thereof etc., etc., and I ruled that I would hear evidence as to where the office of the company was, and also as to the money being there for the purpose named. To which ruling Complainant's Solicitor excepted.'"

Respondent's Solicitor then tendered evidence as follows:

"We want to show that the Galeton Cotton Mills are bondholders and beneficiaries of this suit and that they have taken wrongful possession of this property since the suit was begun, and that they have enjoyed large rents and profits to-wit, $75,000; we wish also to show that they have removed machinery and committed wastes to the amount of $25,000; we wish to show this by expert witnesses." I ruled that I would not hear the evidence. It was admitted that the title to the bonds at the time of this suit was "in these same people, Laniers and their asociates."

I based my ruling upon the decisions.

Upon the matter of title and I based my ruling upon the matter of waste, rents and profit, upon the order of reference to me. No such questions were referred to me as I understand the order.

To these rulings Respondent's Solicitor excepted.

I continued the hearing until October 22nd, 1894, at which time the amended order of reference was handed to me, together with the motion for the same, the response to the rule therefor, and thereupon, I made the following ruling:

"I stated and ruled at the last sitting that I would hear all evidence, showing the nature of the default and whether or not the defendant corporation had money at the time and place of payment as stated in the coupons in the bonds, but since the amended order this day taken has been read to me. I will reverse said ruling and will not hear evidence tendered upon said subject, as I do not feel that under the terms of this order I have the right to hear the same. To which ruling Solicitors for Respondents excepted.

I then proceeded to hear all the evidence tendered, as

shown in my minutes hereto annexed, and after considering the same, together with the evidence heretofore taken, together with the record, I find the report as follows:

First. I find and report that interest was paid and accepted after default, and before the filing of the bill upon bonds number 67, 68, 69, 70, 71, 72, 73, 74, 115, 116, 117, 118, and that said bonds are the property of Mrs. S. H. Kyle, formerly Mrs. S. H. Huguley; and upon bond number 75 the property of Mrs. S. E. Elliott and upon bonds numbers 76, 78, 79 and 80 the property of J. E. Elliott and upon bonds numbers 77, 81, 82, 83, 87 and 88 the property of L. Lanier and upon bonds numbers 84, 85 and 86 the property of Loula E. Elliott and upon bonds numbers 111, 112, 113 and 114 the property of F. H. Huguley, and upon bonds numbers 119, 120 and 121 the property of G. A. Huguley, and upon bonds numbers 122, 123 and 124 the property of F. H. Hooper and upon bonds numbers 125, 126, 127 and 128 the property of the Atlanta National Bank, making a total of bonds 40, now owned as follows:

Mrs. S. H. Kyle, formerly Huguley.....12
Mrs. S. E. Elliott 1
J. E. Elliott 4
L. Lanier 6
Loula A. Elliott 3
F. H. Huguley 4
G. A. Huguley 3
J. F. Hooper..... 3
Atlanta National Bank..... 4

Second. I further find and report that the interest was unpaid after default and before the filing of the bill upon bonds numbers 1, 2, 3, and 4, the property of Mrs. A. D. Moore and upon bonds numbers 5, 6, 15 and 16 the property of the heirs of Julia A. Walker to-wit: Lavina Hackney, Blackburn, Lou E. Kirby and Mrs. C. Hardy, and upon bonds 7 and 8 the property of Joel Walker, and upon bonds 9 and

10 the property of G. A. Huguley and upon bonds 11, 12, 13, 14, the property of Lavina Hackney and upon bonds 17, 18, 19 and 20 the property of Mrs. Lou E. Kirby and upon bonds 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36 the property of Mrs. L. Yancey and upon bonds 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65 and 66, the property of Mrs. L. Lanier as guardian of Susie Huguley. And upon bonds numbers 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, the property of A. T. Dallas, and upon bonds numbers 99, 100, 101, 102, 103 and 104 the property of L. D. Hutchinson, and upon bonds 105, 106, 107, 108, 109 and 110, the property of E. T. Nolan, and upon bonds 129 and 130 called the Demetrious Jannopoulo bonds, which are the property of J. W. Burdett as trustee, making a total number of bonds owned as follows:

Mrs. A. D. Moore	4
Heirs of Julia A. Walker	4
Joel Walker	2
G. A. Huguley	2
Lavina Hackney	4
Mrs. Lou E. Kirby	4
Mrs. L. Yancey	16
Mrs. L. Lanier as guardian for Susie Huguley	30
A. T. Dallas	10
L. D. Hutchinson	6
E. Nolan	6
J. W. Burdett as trustee (Jannopoulo)	2

Third. I have made my calculations to November 1st, 1894, up to that date I find and report that there was due Mrs. A. D. Moore, $2,000.—for principal on her bonds and $80.—for coupon No. 13, $80—for coupon No. 14, $80—for coupon No. 15, $80—for coupon No. 16, $80—for coupon No. 17, $80—for coupon No. 18, $80—for coupon No. 19, and $80—for coupon No. 20, making a total of $640.—

for principal of coupons. I further find interest on coupon No. 13 $24.28, interest on coupon No. 14, $21.42, interest on coupon No. 15, $18.68, interest on coupon No. 16, $15.88, interest on coupon No. 17, $13.08, interest on coupon No. 18, $10.28, interest on coupon No. 19, $17.48, interest on coupon No. 20, $4.68, making a total interest due on her coupons of $115.78.

I find that there was due her Nov. 1st, 1894.

For principal of bonds	$2,000.00
For coupons	640.00
For interest on same	115.78
Making a total due her	$2,755.78

I find and report the same amount due to the heirs of Mrs. Julia A. Walker which I have found and reported to Mrs. A. D. Moore.

I find and report the same amount due Mrs. Lavina A. Hackney, which I have found for Mrs. A. D. Moore.

I find and report the same amount due Mrs. Lou E. Kirby which I have found for Mrs. A. D. Moore.

I find and report that there was due Joel Walker $1,000 for principal of his bonds, and $40 each for coupons, 13, 14, 15, 16, 17, 18, 19 and 20 making a total of $320 due him for said coupons, and $12.14 interest on coupon No. 13, $10.74, interest on coupon No. 14, $9.34, interest on coupon No. 15, $7.94, interest on coupon No. 16, $6.54, interest on coupon No. 17, $5.14, interest on coupon No. 18, $3.74, interest on coupon No. 19, and $2.34 for interest on coupon No. 20, making a total of interest on his coupons of $57.92. Making a total due him

For bonds	$1,000.00
For coupons	320.00
For interest on coupons	57.89
Making a total of	$1,377.89

I further find and report the same amount due J. W. Burdet as trustee which I have found due Joel Walker, less $80 for coupons 13 and 14, and less $12.14 for interest on coupon 13 and $10.74 interest on coupon 14. Said coupon and interest I find and report belong to L. Lanier.

I further find and report that there was due Mrs. L. Yancey upon her bonds as principal $8,000.00, upon her coupons 13, 14, 15, 16, 17, 18, 19 and 20 $2,560.00 and for interest upon her coupons.

For coupon No. 13	.....	$ 97 12
" " " 14	.....	85 68
" " " 15	.....	74 72
" " " 16	.....	63 52
" " " 17	.....	52 32
" " " 18	.....	41 12
" " " 19	.....	29 92
" " " 20	.....	18 72
Making a total of interest on her coupons of	..	$463 12
Making a total due for her principal of bonds	..	$ 8,000 00
For coupons past due	.....	2,560 00
For interest on coupons	.....	463 12
Making a total due of	.....	$11,023 12

I further find and report that there was due A. T. Dallas for principal of his bonds $5,000, and $1,600 for coupons numbers 13, 14, 15, 16, 17, 18, 19 and 20 and

For interest upon coupon No. 13	.....	$ 60 70
" " " " " 14	.....	53 70
" " " " " 15	.....	46 70
" " " " " 16	.....	39 70
" " " " " 17	.....	32 70
" " " " " 18	.....	25 70
" " " " " 19	.....	18 70
" " " " " 20	.....	11 70
Making a total of interest due on coupons of	..	$289 60

Making due for principal of bonds.....$5,000 00
For coupons 1,600 00
For interest on coupons..... 289 60

Making a total due him of.....$6,889 60

I further find and report that there was due Mrs. L. Lanier as guardian for Susie Huguley for principal of her bonds, $15,000, for coupons numbers 13, 14, 15, 16, 17, 18, 19 and 20, $4,800, and

For interest on coupon No. 13 ..... $182 10
" " " " " 14 ..... 161 10
" " " " " 15 ..... 140 10
" " " " " 16 ..... 119 10
" " " " " 17 ..... 98 10
" " " " " 18 ..... 77 10
" " " " " 19 ..... 56 10
" " " " " 20 ..... 35 10

Total interest on coupons.....$868 80

Making a total of principal of bonds.....$15,000.00
Of coupons 4,800 00
Of interest on coupons..... 868 80

Making a total due of.....$20,668 80

I further find and report that there was due L. D. Hutchinson as principal on his bonds, $3,000, and for coupons, 13, 14, 15, 16, 17, 18, 19 and 20, $960.00.

And for interest on coupon No. 13 ..... $ 36 42
" " " " " " 14 ..... 32 22
" " " " " " 15 ..... 28 02
" " " " " " 16 ..... 23 82
" " " " " " 17 ..... 11 02
" " " " " " 18 ..... 15 42
" " " " " " 19 ..... 11 22
" " " " " " 20 ..... 7 02

Making a total interest of.....$173 76

For principal of bonds	$3,000.00
For coupons	960.00
For interest on coupons	173.76
Making a total due him of	$4,133.76

I further find and report the same amount due E. J. Nolan which I have found due L. D. Hutchinson.

I further find and report that there is due G. A. Huguley as principal on bonds numbers 9 and 10 the sum of $1,000. and $40 each on coupons 13, 14, 15, 16, 17, 18, 19 and 20 making a total due of $320 due him for said coupons.

And for interest on coupons No. 13	$12.14
" " " " " " 14	10.74
" " " " " " 15	9.34
" " " " " " 16	7.94
" " " " " " 17	6.54
" " " " " " 18	5.14
" " " " " " 19	3.74
" " " " " " 20	2.34
Total interest on coupons	$57.92
Making due him for principal on said bonds	$1,000.00
For coupons	320.00
For interest on same	57.92
Making a total on said bonds of	$1,377.92

I further find and report that there is due G. A. Huguley for principal on his other bonds 119, 120, and 121 $1,50, and for his coupons numbers 17, 18, 19 and 20, $240.00, and

For interest on coupons No. 17	$9.81
" " " " " 18	7.71
" " " " " 19	5.61
" " " " " 20	3.51
Total interest on coupons	$26.64

Making due for principal on said bonds.....$1,500.00
For coupons on the same 240.00
For interest on the same 26.64

Making total due on these three bonds of....$1,766.64

Making total due him on all bonds $2,500.00, on all coupons $560.00 and interest on all coupons $84.56. Making a total due him of $3,144.56.

I further find and report that there was due S. E. Elliott $500 as principal and $80 for coupons 17, 18, 19 and 20 and

For interest on coupon No. 17.....$3.27
" " " " " 18 ..... 2.57
" " " " " 19 ..... 1.87
" " " " " 20 ..... 1.17

Making a total of interest on coupons.....$8.88

Making due her for principal.....$500.00
For coupons 80.00
For interest on coupons 8.88

Total amount due her..... 588.88

I further find and report that there was due J. E. Elliot for principal of his bonds $2,000, and $320 for coupons 17, 18, 19 and 20 and

For interest on coupon No. 17.....$13.08
" " " " " 18 ..... 10.28
" " " " " 19 ..... 7.48
" " " " " 20 ..... 4.68

Making a total interest on coupons.....$35.52

Making a total due him for principal of his bonds of$2,000.00
For coupons 320.00
For interest on coupons 35.52

Making a total due him of $2,355.52

I further find and report that the same amount is due F. H. Huguley, which I have found and reported to be due said J. E. Elliott.

I further find and report that there is due Loula A. Elliott for principal of her bonds $1,500, and for coupons 17, 18, 19 and 20, $240, and

For interest on coupon No. 17		$9.81
" " " " " 18		7.71
" " " " " 19		5.61
" " " " " 20		3.51
Total interest on coupons		$26.64
Making total due her for principal of bonds		$1,500.00
For coupons		240.00
For interest on same		26.64
Making a total due her of		$1,766.64

I further find and report that there is due J. F. Hooper the same amount which I found to be due Loula A. Elliott.

I further find and report that there is due L. Lanier for principal on his bonds $3,000, and for coupons 17, 18, 19 and and 20, $ 480 , and

For interest on coupon No. 17		$19.62
" " " " " 18		15.42
" " " " " 19		11.22
" " " " " 20		7.02
Making a total due for interest		$53.28
Making due him for principal		$3,000.00
For coupons		480.00
For interest on coupons		53.28
Making a total due of		$3,533.28

Also due him $80 for coupons 13 and 14 on bonds 129 and 130 and $22.88 interest on same.

I further find and report that there is due the Atlanta National Bank for principal of its bonds $2,000, and for coupons 14, 15, 16, 17, 18, 19 and 20 $560 and

For	interest	on	coupon	No.	14	$21.48
"	"	"	"	"	15	18.68
"	"	"	"	"	16	15.88
"	"	"	"	"	17	13.08
"	"	"	"	"	18	10.28
"	"	"	"	"	19	7.48
"	"	"	"	"	20	4.68

Making a total of interest of $91.56

Making a total due it for principal $2,000.00
For coupons 560.00
For interest on coupons 91.56

Making a total due of $2,651.56

I further find and report that there is due Mrs. S. H. Kyle, formerly Huguley, the sum of $6,000, for principal of her bonds, and that there is due her $560, for coupons—17—18—19 and 20, and due her for interest on coupons $106.56 as follows:

Interest	on	coupon	No.	17	$39.24
"	"	"	"	18	30.24
"	"	"	"	19	22.44
"	"	"	"	20	14.04

Total $106.56

Making a total due her for her principal..... $6,000.00
For coupons 560.00
And for interest on coupons 106.56

Making a total due her of $6,666.56

Fourth. In obedience to the original order of reference, I find that the bill was filed in this case on the 21st, day of January, 1891, and that there had accrued upon each unpaid coupon number 13 to-wit payable July 1st, 1890 the sum of seventy-eight cents for interest from July 1st, 1890, to January 21st, 1891, and that there was due for interest on said coupon No. 13 as follows:

Mrs. A. D. Moore	$3.12
Heirs of Julia A. Walker	3.12
Lavinia A. Hackney	3.12
Mrs. Lou E. Kirby	3.12
Joel Walker	1.56
G. A. Huguley	1.56
Mrs. L. Yancy	12.48
Mrs. L. Lanier as guardian for Susie Huguley	23.40
A. T. Dallas	7.80
L. D. Hutchinson	4.68
E. J. Nolan	4.68
L. Lanier	1.56

I further find and report that at the time of filing of said bill, to-wit, January 21st, 1891, there was due Mrs. A. D. Moore $2,000, for principal of her bonds, and $160, for coupons 13 and 14, and $3.12 for interest on coupon No. 13 and 32 cents for interest on coupon No. 14.

Making a total due her at the date of the filing of said bill.

For principal	$2,000.00
For coupons	160.00
For interest on coupon No. 13	3.12
For interest on coupon No. 14	.32
Making a total due of	$2,163.44

I further find and report that the same amount were due the heirs of Julia A. Walker which I have found to be due Mrs. A. D. Moore.

I further find and report that the same amounts were due

Lavina Hackney, which I have found to be due Mrs. A. D. Moore.

I further find and report that the same amounts were due Mrs. Lou E. Kirby, which I have found to be due Mrs. A. D. Moore.

I further find and report that there was also due to Joel Walker $1,000 for principal and $80.—for coupons 13 and 14, and $1.56 interest on coupons number 13, and 16 cents interest on coupon number 14, making a total due him for principal.

For principal	$1,000.00
For coupons	80.00
Interest on coupon No. 13	1.56
Interest on coupon No. 14	.16
Making a total due him of	$1,081.72

I further find and report that there was due G. A. Huguley the same amount which I have found to be due said Joel Walker.

I further find and report that there was also due J. W. Burdett, as trustee; the same amount which I have found to be due said Joel Walker. Less $80 for coupons 13 and 14 on bonds 129 and 130 and $1.56 interest on coupons 13 and .16 interest on coupon 14 and that said $80 and interest are the property of L. Lanier.

I further find and report that there was due L. D. Hutchinson, the sum of $1,500—for principal of his bonds, and $240 for his coupon 13 and 14 and $4.68 for interest on his coupons No. 13 and 24 cents for interest on his coupon No. 14, making due him.

For principal	$1,500.00
For coupons	240.00
For interest on coupon No. 13	4.68
" " " " " 14	.24
Making a total due him of	$1,744.82

I further find and report that there was due E. J. Nolan, the same amount which I have found to be due said L. D. Hutchinson.

I further find and report that there was due Mrs. L. Yancey for principal of her bonds $8,000, and $640 for her coupons No. 13 and 14, and $12.48 for interest on coupon No. 13 and $1.30 for interest on coupon No. 14.

Making a total for principal	$8,000.00
For coupons	640.00
For interest on coupon No. 13	12.48
For interest on coupon No. 14	1.30
Making a total due her of	$8,653.78

I further find and report that there was due Mrs. L. Lanier as guardian for Susie Huguley for principal of her bonds $15,000 and $1,200 for coupons 13 and 14 and $23.40 interest on coupon No. 13 and $2.45 for interest on coupon No. 14, making a total

For principal	$15,000.00
For coupons	1,200.00
For interest on coupon No. 13	23.40
For interest on coupon No. 14	2.45
Making a total due her of	$16,225.85

I further find and report that there was due A. T. Dallas for principal of his bonds $5,000 and $400 for his coupons 13 and 14 and $7.80 interest on coupon No. 13 and .81 interest on coupon No. 14,

Making a total for principal	$5,000.00
For coupons	400.00
For interest on coupon No. 13	7.81
For interest on coupon No. 14	.81
Making a total due him of	$5,408.61

And that all of said parties named in this finding were entitled to have and receive said amounts at the date of the filing of said bill.

Fifth. I further report that the present owners of said bonds are the persons named herein as owning the same, and further that I have used the evidence heretofore taken, and also received such other evidence as was tendered to me which I deemed pertinent under the order of reference, and also examined the record.

Respectfully submitted,

JULIUS L. BROWN, Master in Chancery.

As solicitors for the parties respectively, we hereby acknowledge receipt of copy of the above draft of master's report.

P. H. BREWSTER,
B. F. ABBOTT,
Solicitors for Complainants.

JOHN C. REED,
Solicitor for Respondents.

Filed in clerk's office 15th day of Nov., 1894.

O. C. FULLER, Clerk.

Opinion of Court Providing for Appointment of Commissioner and Re-sale of Property.

In the Circuit Court of the United States for the Northern District of Georgia.

J. J. ROBINSON, TRUSTEE,
versus
ALA. & GA. M'F'G. CO. ET AL. } In equity.

In an opinion filed on a motion for restitution in this case on the 14th day of September, 1894, it was stated that it would probably be necessary to hear counsel before framing a decree. Counsel were subsequently heard and a decree entered as follows:

"The matter of framing the proper order or decree under the opinion of the Court of file in the matter of restitution, came on to be heard by the Court, and after argument of counsel thereon on the various aspects of said matter as

suggested by counsel, and on consideration thereof, it is considered, ordered and decreed:

1. That the motion of defendants that they have restitution of the property described in the petition and which was sold under the decree of this Court, as shown by the record, be granted on condition that they deposit with the Register of this Court, within thirty days from this date, the sum of ten thousand dollars, the same being the sum paid into this Court by L. Lanier, A. T. Dallas and J. T. Kirby, the purchasers of said property.

2. The motion of said defendants, the Huguley Manufacturing Company, et al, to refer the question of mense profits arising from the use and operation of the property since the sale in connection with the amount to be paid into Court as a condition to restitution, in order that the one may be offset against the other in case it shall appear that mesne profits have accrued, is denied."

3. "The motion of counsel for complainants, that the condition of restitution should be that defendants asking restitution should give bond and security that the property on a re-sale should bring as much as it sold for at the first sale as is also denied."

The judgment of the court was that restitution should be made only on condition that the amount of money paid into court by the purchasers, should be repaid to them before possession would be restored. As stated in the opinion alluded to, the effect of the judgment of reversal was not only to set aside the decree, but, as it seemed, to annual subsequent proceedings. Still, when the purchasers of the property paid into court the $10,000.00, they paid it under a decree valid and subsisting at that time, and really paid the money for the benefit of the Huguley Manufacturing Company. The money was paid court and paid out for costs due by them, and on their debts, and they received the benefit of it. Certainly not to require payment to the purchasers

of this amount before restitution, would seem to be inequitable. This much is stated now, as it was stated orally at the time of rendering the decree for restitution, for the purpose of making understood what is now said on the proceeding at present before the court.

In accordance with the decision of the Appellate Court, after entry of the mandate, the original suit for a foreclosure standing open by the reversal for further action, was referred to a master who made his report, and certain exceptions to it have been overruled,—the exceptions really being to the same effect as the questions raised by the Huguley Manufacturing Company, on their application for restitution.

The case is now ripe for a decree of foreclosure of the mortgage as to such of the bonds as the master finds did not accept their interest at the time of the default in January—The Huguley Manufacturing Company failed to comply with the condition in the order for restitution, by paying the $10,000.00, and there has consequently been no restitution. As a result the possession of the purchasers has not been disturbed, and the serious question is as to what decree should now be entered beyond the decree foreclosing the mortgage for the amount of the bonds reported by the Master.

It is contended for the complainants that there should be a decree confirming the original sale and the title in the purchasers; and on the other hand, that the only decree the court can enter is a decree for the resale of the property. The argument for the former position is, that the court having by its order for restitution, provided that such restitution should only be made on condition, and such condition not having been complied with, it leaves the purchasers in the rightful possession of the property, and that no sale of the property which would be effective could now be made. For the latter position the contention is, that if, by the decree of reversal of the Appellate Court, all the proceedings subsequent to the rendition of the original decree were annulled,

the title to the property in question, as a result, fails, and there is nothing for the court to do but appoint a commissioner and sell it again.

This presents a very difficult question. The case is in an anomalous situation. There is force in the contention that in view of the former ruling of the court that restitution could only be had on condition, that the non-compliance with that condition left the title to the property in the purchasers, and that they are entitled to a decree confirming such title. On the other hand, the argument is, that the motion for restitution was a mere application to have *possession* of the property restored, and did not necessarily affect such title, but simply to determine the matter of right to possession. But the court is now rendering a decree, giving judgment and fixing a lien on the property in issue, for the amount reported by the Master, namely, the amount of bonds in default and which may be properly foreclosed under the rulings of this court and of the Appellate Court, with interest thereon.

Now what shall be done with this judgment? That it is necessary that a decree of foreclosure should be rendered, all parties to the case agree. It will determine that a lien on this property exists, and has existed all along, for the amount reported by the master. Such being the situation, is it material to determine the exact status of the purchasers as to title or possession? In the peculiar condition of the case, they hold it certainly subject to the lien of the mortgage for the amount to be named in this new decree now to be entered. The defendant company claims that it has the right to have this property sold under a valid decree. Perhaps it has. Certainly no harm can be accrued to these purchasers if the amount of the debt outstanding, and which they control, is as they state it, and the value of the property such as they contend. All this can be determined, however, and the right of all parties protected, by the direction which will now be given in the case. There is but one practical course, and that

is to provide in the present decree, for the appointment of a commissioner and re-sale of the property. The rights of these purchasers as to the amount heretofore paid into this court, in connection with this proceeding, is still in the entire control of the court and can be fully protected to any extent that such rights may exist, by proper order in distributing the funds arising from the sale.

Let a decree be framed carrying into effect these views.

This March 9th, 1895.

WM. T. NEWMAN, U. S. Judge.

Filed in office March 9, 1895.

O. C. FULLER, Clerk.

By GEO. S. BARNARD, Deputy.

Final Decree.

In the Circuit Court of the United States, Northern District of Georgia.

J. J. ROBINSON, TRUSTEE, *vs.* ALA. & GA. M'F'G CO., ET AL. } No. 360. In equity. Foreclosure of mortgage.

This cause came on to be heard at this term of the court and was urged by counsel, thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows:

1. The court finds, that default was made in the payment of the interest on all the bonds issued by the Alabama and Georgia Manufacturing Co. and to secure with the trust deed sought in this suit to be foreclosed was executed, to-wit, Nos. from 1 to 130 inclusive, which interest became due on July 1st, 1890, and that said default continued for a period longer than six months, and by reason of such default in the payment of said interest for a period longer than six months the principal and interest on each of said bonds become due and payable on and after the first day of January, 1891.

2. The court finds, that after said default had occurred as found above, but before the filing of this suit, the holders

of Nos. 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, being forty bonds in number, accepted the interest on the said bonds, and by the accepting of said interest they waived the default, and the principal of said bonds amounting to the aggregate sum of twenty thousand ($20,000) dollars was not due and payable at the date of filing this suit, and that said trust deed can not be foreclosed for said amount of said forty bonds.

3. The court finds, that interest was not accepted on the bonds, ninety in number, to-wit: Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 129 and 130, and said default is hereinbefore found to have occurred was not waived and said trust deed can be foreclosed for the amount due on said ninety bonds, the principal due thereon being the sum of forty-five thousand ($45, 000) dollars, with accrued interest.

4. The court finds, of those bonds upon which the interest was accepted and the default waived, Nos. 67, 68, 69, 70, 71, 72, 73, 74, 115, 116, 117 and 118 belonged to Mrs. S. H. Huguley, now Mrs. Kyle, and the amount of the principal is six thousand ($6,000) dollars; and the accrued interest unpaid is coupons 17, 18, 19 and 20, amounting in the aggregate to the sum of five hundred and sixty ($560) dollars; and the interest due on the coupons to November 1st, 1894, is one hundred and six dollars and fifty-six one-hundredths ($106.56), making due as the total amount of said twelve bonds, six thousand six hundred and sixty-six and fifty-six one-hundredths ($6,666.56) dollars at said date. No. 75 belongs to Mrs. S. E. Elliott, and the principal is ($500), and

the accrued interest unpaid is coupons Nos. 17, 18, 19 and 20, amounting in the aggregate to the sum of eighty ($80) dollars; and interest due on the coupons is eight and 88-100 ($8.88) dollars; making total amount of said bond five hundred and eighty-eight and 88-100 ($588.88) dollars, Nov. 1st, 1894. Nos. 76, 78, 79 and 80 belong to J. E. Elliott and the aggregate principal is two thousand ($2,000) dollars; and the accrued interest is unpaid coupons Nos. 17, 18, 19 and 20 amounting in the aggregate to three hundred and twenty ($320) dollars, the interest due on these coupons is thirty-five and fifty-two hundredths ($35.52) dollars; making a total of said four bonds, principal and interest, November 1, 1894, twenty-three hundred and fifty-five and 52-100 ($2,355.52) dollars. Nos. 111, 112, 113 and 114 belong to T. H. Huguley, the principal and interest, numbers of coupons, of unpaid interest, and interest on coupons being exactly in amounts corresponding to last four bonds belonging to J. E. Elliott, total being twenty-three hundred and fifty-five and 52-100 dollars. Nos. 125, 126, 127 and 128 belong to the Atlanta National Bank; the aggregate principal is two thousand ($2,000) dollars and the accrued interest is unpaid coupons Nos. 14, 15, 16, 17, 18, 19 and 20, amounting in the aggregate to the sum of five hundred and sixty ($560) dollars; interest due on these coupons is ninety-one and 56-100 ($91.56) dollars; making total of said four bonds two thousand six hundred and fifty-one and 56-100 ($2,651.56) dollars, Nov. 1, 1894. Nos. 84, 85 and 86 belong to Loula A. Elliott, aggregate principal being fifteen hundred ($1,500) dollars; accrued interest unpaid coupons Nos. 17, 18, 19 and 20, amounting in the aggregate to the sum of two hundred and forty ($240) dollars; interest on coupons, twenty-six and 64-100 ($26.64) dollars; making total of said three bonds seventeen hundred and sixty-six and 64-100 ($1,766.64) dollars, to Nov. 1, 1894. Nos. 119, 120 and 121 belong to G. A. Huguley, and the principal and accrued interest in

unpaid coupons, and interest on coupons is identical with numbers belonging to Loula A. Elliott, total being seventeen hundred and sixty-six and 64-100 [$1,766.64] dollars, Nov. 1, 1894. Nos. 122, 123 and 124, belong to T. H. Hooper; principal, interest coupons unpaid, and interest on coupons identical with those belonging to Loula A. Elliott, total being seventeen hundred and sixty-six and 64-100 [1,766.64] dollars, November 1, 1894. Nos. 77, 81, 82, 83, 87 and 88 belong to L. Lanier; principal in aggregate three thousand [$3,000] dollars; accrued interest in unpaid coupons Nos. 17, 18, 19 and 20, four hundred and eighty [$480] dollars; interest on coupons fifty-three and 28-100 [$53.28] dollars; making total of six bonds, thirty-five hundred and thirty-three and 28-100 [$3,533.28] dollars, November 1, 1894. Making a total of twenty thousand [$20,000] dollars principal at the date of filing this suit which was not due, and on said bonds since filing this suit has accrued thirty-four hundred and fifty-one and 24-100 [$3,451.24] in unpaid coupons and interest on coupons to November 1, 1894.

5. The court finds, that of those bonds on which interest was not accepted and the default was not waived, Nos. 37 to 66 inclusive, belong to Mrs. L. Lanier, guardian of Susie Huguley; aggregate principal due at date of filing suit fifteen thousand ($15,000) dollars; accrued interest in unpaid coupons Nos. 13 to 20 inclusive, forty-eight hundred ($4,800) dollars, interest on coupons to Nov. 1st, 1894, eight hundred and sixty-eight 80-100 ($868.80) dollars; making total due on said bonds to Nov. 1st, 1894, twenty thousand six hundred and sixty-eight and 80-100 ($20,668.80) dollars. Nos. 21 to 36 inclusive, belong to Mrs. L. Yancy; aggregate principal due date of filing, eight thousand ($8,000) dollars, accrued interest in unpaid coupons, Nos. 13 to 20 inclusive, aggregate twenty-five hundred and sixty ($2,560) dollars; interest on coupons to Nov. 1st, 1894, four hundred and sixty-three and 12-100 ($463.12) dollars; making total due on six-

teen bonds eleven thousand and twenty-three and 12-100 ($11,023.12), dollars. Nos 1, 2, 3, and 4, belong to Mrs. A. D. Moon; Nos. 5, 6, 7, and 8, belong to the heirs of Julia A. Walker; Nos. 11, 12, 13, and 14 belong to Lavinia Hackney; Nos. 17, 18, 19 and 20 belong to Mrs. Lou King. Amount of aggregate principal of each of the above blocks of four bonds is two thousand ($2,000) dollars, due at date of filing this suit; accrued interest in unpaid coupons Nos. 13 to 20 inclusive, six hundred and forty ($640) dollars; interest on coupons to Nov. 1st, 1894, one hundred and fifteen and 78-100 ($115.78) dollars, making total on each block of four bonds twenty-seven hundred and fifty-five and 78-100 ($2,755.78) dollars. Nos. 7 and 8 belong to Joel Walker, Nos. 9 and 10 belong to G. A. Huguley Nos. 129 and 130 belong to Demetrious Jannopoulo; amount of aggregate principal due on each block of two bonds above is one thousand ($1,000) dollars; accrued interest in unpaid coupons Nos. 13 to 20 ininclusive, aggregates three hundred and twenty ($320) dollars; interest on coupons fifty-seven and 92-100 ($57.92) dollars, to Nov. 1st, 1894; making total due on each block of two bonds, Nov. 1, 1894, principal and interest thirteen hundred and seventy-seven and 92-100 ($1,377.92) dollars. Nos. 99 to 104, both inclusive, belong to S. D. Hutchinson; Nos. 105 to 110, both inclusive, belong to E. J. Nolan; the amount of the aggregate principal due on each of the last two blocks of six bonds each is three thousand ($3,000) dollars; accrued interest in unpaid coupons Nos. 13 to 20 inclusive, is nine hundred and sixty ($960) dollars; interest on coupons to Nov. 1st, 1894, one hundred and seventy-three and 76-100 ($173.76) dollars, making total on each of said blocks of six bonds Nov. 1st, 1894, principal and interest, forty-one hundred and thirty-three and 76-100 ($4,133.76) dollars. Nos. 89 to 98 inclusive, belong to A. T. Dallas; the aggregate principal due on said ten bonds is five thousand ($5,000) dollars; the accrued interest in unpaid coupons Nos. 13 to 20

clusive, one thousand ($1,000) dollars; interest on coupons to Nov. 1, 1894, two hundred and eighty-nine and 60-100 ($289.60) dollars. Making a total on said ten bonds principal and interest to Nov. 1st, 1894, $6,889.69-100 dollars making a total of principal due on the said ninety bonds upon which interest was not paid and accepted and the default waived of forty-five thousand ($45,000) dollars, and total interest due up to November 1st, 1894, seventeen thousand and five and 92-100 ($17,005.92) dollars.

6. And it is further adjudged and decreed, that the plaintiff do recover of and from the said Alabama & Georgia Manufacturing Company the said sum of forty-five thousand ($45,000) dollars principal, and seventeen thousand and five and 92-100 ($17,005.92) dollars for interest up to the 1st day of November, 1894, with all accruing interest on said principal from said date until paid, at 8 per cent per annum and .....dollars as cost of this cause, the said sums to be satisfied out of the mortgaged premises hereinafter described, that is to say "All of a large Island in the Chattahoochee river, designated as Island No. 6, containing one hundred and forty-three (143) acres, more or less; also Island No. 9, containing seven (7) acres, more or less; also a small Island between No. 6 and No. 9, upon which the east end of the factory building rests, containing four (4) acres, more or less, all of said three above described Islands being in the 20th, district of Harris county, Georgia.

Also all that tract or parcel of land lying on the west side of the Chattahoochee river, opposite the above described Islands bounded on the east by said river, beginning at a point on the west bank of said river, nearly opposite the center of the (7) acre Island, at a black gum, at or near a place known as Sell's Corner; thence in a straight line to a point where the land owned in 1868 by Mrs. Freeman, Job Ross and James Campbell, joins, known as the Ross and Freeman Corner, to a pine stake; thence in a line to a branch near said stake, thence in

a line down said branch to said river; thence down the western bank of said river to the beginning point, containing sixty-five and 23-100 (65.23) acres, more or less, lying and being in Chambers county, State of Alabama, and being part of section twenty-eight and section twenty-nine (28 and 29) township twenty-one (21), range twenty-nine (29), as well as a forty (40) foot right of way from factory building to the public road leading from West Point, Georgia, to Berlin, Alabama, at any point where the factory company may locate it, including all tenements and improvements, including the cotton mill and all the machinery therein or thereto belonging, and all water privileges and riparian rights now, or hereafter owned or enjoyed by said Alabama & Georgia Manufacturing Company.

7. It is further ordered and decreed that the remainder of said bonds, to-wit forty (40) in number, which are numbers as set out in paragraph 2 of this decree for the aggregate sum of twenty thousand ($20,000) dollars and for the sum of three thousand four hundred and fifty-one and 24-100 ($3,451.24) dollars, interest there onto November 1, 1894, were not due at the time of the filing of this suit, and said plaintiff as trustee is not entitled to recover therefor.

8. That the equity of redemption in and to said mortgaged premises be and the same is hereby barred and forever foreclosed, so far as the right of said defendant corporaation, or any one claiming under or through it is concerned, since the date of the execution of said trust deed or mortgage, to-wit the 2nd day of January, 1884.

9. It is further adjudged and decreed that unless the said defendant shall pay into this court, within 30 days from this date, the said sums of money, to-wit: forty-five thousand ($45,000) dollars principal, and seventeen thousand and five and 92-100 ($17,005.92) dollars interest, with all accruing interest at 8 per cent, as in this decree adjudged to be due, together with the cost of this cause; then on failure to so pay

in the same Samuel C. Dunlap, Esquire, who is hereby appointed commissioner of this court to advertise and offer the said property for sale, on the following terms and conditions: Said Commissioner will advertise said property once a week for four weeks in the daily Constitution newspaper published in the city of Atlanta and in the Hamilton Journal published in Hamilton, Harris county, Georgia, prior to the offering said property for sale, and on Tuesday the fourth day of June, 1895, at twelve o'clock, he will offer the same for sale to the highest bidder before the court house door in the town of Hamilton, Harris county, Georgia. Said commissioner will report to this court the name of the highest bidder, with the amount of his bid, for the confirmation or rejection. He shall require the person bidding off said property, should he be a person other than one representing a majority in amount of the outstanding bonds of said company, to pay into the hands of the commissioner ten thousand ($10,000) dollars, to insure compliance with his bid, in case the sale is confirmed. Any bondholder may bid on said property and in case it shall be bid off by any person for on behalf of the holders of a majority of said bonds in amount, then such purchaser shall not be required to pay into the hands of the commissioner pending his report and confirmation or rejection any more than $5,000 to cover costs, fees and expenses of sale.

10. And it is further adjudged and decreed, that in case the holders of said bonds or any of them, purchase said property, they shall be entitled on confirmation to pay the balance of the purchase money in and with the bonds of said company whether the same have matured or not, in the proportion and to the extent that such bonds would be entitled to share in the proceeds of sale if all the purchase money was paid in cash.

11. It is further ordered and decreed, that in case said defendant fails to pay into court the said sums hereby decreed to have matured at the time of the filing of the bill,

within the time herein allowed, and in case the property is sold and the proceeds is brought into court for distribution then and in that event the bonds hereby decreed not to have matured at the time of the filing of this bill which bonds are described in paragraph 2 of this decree, are hereby entitled to share in the proceeds of said sale on distribution in amounts according to the findings of the Special Master with all accruing interest and the holders and owners of said bonds may present them, with coupons attached, for their proper pro rata share of said proceeds according to their tenor and effect.

The court being of the opinion that the property decreed to be sold is indivisable and can not be sold to satisfy that portion of the bonds which are hereby decreed to have matured without destroying the value of the property as security for said bonds. And it further appearing that the defendant is insolvent and has ceased to do business; and it further appearing that the said bonds described in the second paragraph of this decree have become due since the filing of the bill by reason of non-payment of interest.

12. The rights of the purchaser of the said property at the sale heretofore made as to amount paid into court are reserved and subject to any other and further decree as to the court may seem meet and proper.

The court also reserves the right to make any other and further decree in reference to the entries of credits on said bonds and the control of the same as shall appear to be proper on final distribution as well as to make any further decree in conformity with the general scope hereof as well as to make any order or decree adjusting the claim of defendants for costs in the Court of Appeal.

13. It is further ordered and decreed, that for any balance of said sums hereby adjudged to be due, which may remain unsatisfied after the sale of said property the said plaintiff may have execution therefore against said defendants.

In open court March 30, 1895.

WM. T. NEWMAN, U. S. Judge.

Filed in clerk's office, 1st day of April, 1895.

O. C. FULLER, Clerk.

By J. D. STEWARD, Deputy.

The Commissioner named in the foregoing decree having failed to advertise the property described in this decree for sale on the first Tuesday in June, 1895, for want of time. It is now ordered and decreed that this decree be amended so that the commissioner Samuel C. Dunlap Esq., be and he is hereby ordered and directed to offer said property for sale on the first Tuesday in July, 1895, after due advertisement as in said decree provided instead of the first Tuesday in June, 1895.

In open Court this 27 May, 1895.

WM. T. NEWMAN, U. S. Judge.

Petition and order for Appeal.

Circuit Court of the United States, for the Northern District of Georgia.

J. J. ROBINSON, TRUSTEE & PLAINTIFF,
vs.
THE ALA. & GA. M'F'G CO., HUGULEY M'F'G CO., & WILLIAM T. HUGULEY. } Respondent, Appellants.

The above named defendants, The Alabama & Georgia M'f'g Co., Huguley M'f'g Co., and William T. Huguley, conceiving themselves aggrieved by the order and decree entered on March 30, 1895, in the above entitled proceeding do hereby appeal from said order to the United States Circuit Court of Appeals for the Fifth Circuit, at New Orleans, La., and they pray that this their appeal may be allowed; and that a transcript of the record and proceedings and papers upon which said order and decree were made, duly authenticated, may be sent the United States Circuit Court of Appals for the Fifth Circuit at New Orleans, Louisiana.

J. M. CHILTON.
W. R. HAMMOND.

Attorneys for defendants and Appellants, the Alabama &

Georgia M'f'g Co., Huguley M'f'g Co., and William T. Huguley.

Atlanta, Ga., June 8th, 1895.

And now to-wit, on June the 8th, 1895, it is ordered that the appeal be allowed as prayed for.

WM. T. NEWMAN, U. S. Judge.

Acknowledgment of Service.

Due and legal service of the within appeal and of a copy of the same, is hereby acknowledged, and all other and further service and notice waived.

June 8th, 1895.

DORSEY, BREWSTER & HOWELL,
B. F. ABBOTT,
Solicitors for Robinson Trustee.

Filed in Clerk's Office 8th day of June, 1895.

O. C. FULLER, Clerk.

In the Circuit Court of the U. S. for the Northern District of Georgia.

J. J. ROBINSON, TRUSTEE, } Appellee,
vs.
ALA. & GA. M'F'G. CO., ET AL. } Appellants.

The said appellants having prayed an order fixing the amount of a bond which shall operate as a supersedeas of the final decree ordering a sale in this cause. It is ordered, that the amount of said bond be and the same is hereby fixed at the sum of $5,000.

June 8, 1895.

WM. T. NEWMAN, U. S. Judge.

Filed in clerk's office, 8th day of June, 1895.

O. C. FULLER, Clerk.

By J. D. Steward, Deputy.

Citation on Appeal.

UNITED STATES OF AMERICA, *ss.*

To J. J. Robinson, Trustee &c.—*Greetings:* You are

hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Fifth Circuit to be holden at New Orleans, in the State of Louisiana, on the 3d Monday in November, 1895, pursuant to an appeal, filed in the clerk's office of the United States Circuit Court for the Northern District of Georgia, wherein the Alabama & Georgia Manufacturing Company, Huguley Manufacturing Company and William T. Huguley are appellants, and J. J. Robinson, Trustee, &c., is respondent, to show cause, if any there be, why judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties on that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 8th day of June, in the year of our Lord, 1895.

WM. T. NEWMAN, U. S. Judge.

Acknowledgment Service.

Due and legal service of the within and foregoing citation on appeal, and of a copy of the same, is hereby acknowledged, and all other and further service and notice waived this 8th day of June, 1895.

P. H. BREWSTER,
B. F. ABBOTT,
Attys. for Robinson Trustee.

In the Circuit Court of the United States for Northern District of Georgia.

J. J. ROBINSON, TRUSTEE & PLAINTIFF,
vs.
THE ALA. & GA. M'F'G CO., HUGULEY M'F'G CO., & WILLIAM T. HUGULEY.

Assignment of Errors.

The Alabama & Georgia Manufacturing Company, Huguley Manufacturing Company and William T. Huguley, hav-

ing prayed and taken an appeal in the above entitled cause, now jointly and severally assign the following errors:

1. The Court erred in rendering the said final decree without first having required restitution to be made of the property sold under the first decree which was reversed.

2. The Court erred in not having ascertained, or in not directing to be ascertained, before proceeding to said final decree, the value of the rents and profits of the property which had been sold under the prior decree of foreclosure, which was reversed, said rents and profits being claimed in the petition of the defendants of file in the case.

3. The court erred in refusing to grant the petition filed by the defendants in said case, praying to be restored to the possession of the mortgaged property, and for an account of the rents and profits thereof.

4. The Court erred in the decretal order of date, September 22nd, 1894, whereby it required the sum of $10,000.00 should be paid into court as a condition precedent to restitution of the mortgaged property, and as condition precedent to an accounting for the rents and profits of said mortgaged property.

5. The Court erred in the decretal order last aforesaid in requiring re-imbursement to be made by the defendants to said purchasers as a part of said $10,000 of the sum of $5,897.50, paid by said purchasers for the purchase of bonds owned by Mrs. S. H. Huguley and D. Jannopoulo, said bonds not being in default, and the owners of the same declining to join with the other bondholders in the purchase of the property, and no part of said sum of $5,897.50 having been paid into court.

6. The Court erred in decretal order last aforesaid in ruling that as much as $10,000 was paid into court by the purchasers at the day of sale, it being the fact as appears in the record that only $4,102.50 was paid into court, of which last mentioned sum about $3,250 was re-imbursed to said

purchasers by assessments made against the bondholders, wherefore it appears said purchasers really paid into court only $857.50.

7. The Court erred in the decretal order last aforesaid in requiring re-imbursement to be made by defendants to said purchasers as a part of said $10,000, the sum of $2,600 fees of solicitors of complainants satisfied out of the $4,102.50 actually paid into court as stated above, the record not showing any liability of defendants for the same, and the court having previously decided that said fees were payable only out of the fund after it had been brought into court, and were not chargably against the defendant, reserving his final decisions as to allowing these fees until these fees had been brought into court.

8. The court erred in the decretal order last aforesaid, in denying the motion of Huguley Manufacturing Company et al., to refer the question of mesne profits arising from the use and operation of the property since the sale in connection with the amount to be paid into court as a condition of restitution, in order that the one might be set off against the other, in case it should appear that mesne profits had so accrued.

9. Said court erred in its decretal order of date October 20, 1894, amending and modifying a decretal order of reference of date September 22d, 1894, said errors being as follows, to-wit:

(1). Said amended order improperly excluded from consideration by the master all evidence going to show that there was at the date of the default in interest alleged in the bill, sufficient money at the office of the Alabama and Georgia Manufacturing Company, at West Point, Ga., to pay such interest, and that such fund was there for such purpose, and that no demand was there made for same; and that said fund was then and there in the hands of W. H. Huguley & Co. for said purpose.

(2). The court erred in refusing to direct said master to take evidence and report the fact, nature and extent of any default constituting a breach of the condition of the mortgage which said bill is filed to foreclose. Which said prayer was incorporated in the answer filed October 20. 1894, in response to a rule to show cause why said former order of reference should not be amended.

10. Said final decree of March 30th, 1895, is erroneous in that it is not sustained by the evidence.

11. Said final decree is erroneous in that it finds due and in default a very much larger amount of the principal and interest of the bonds than is disclosed by the master's report $43,000 instead of $45,000 being the proper amount of principal.

12. Said final decree is erroneous in that it adjudges that all the defendants are liable for the debt therein ascertained to be due.

13. Said decree is erroneous in that Huguley Manufacturing Company is or could be made, by the terms of said decree, liable for the debt, secured by said mortgage, or some portion thereof.

14. Said decree is erroneous in that under the evidence the complainant was not entitled to a foreclosure of any of the debts secured by said mortgage, in that no proper demand had ever been made for the payment of said interest.

Said decree is erroneous in that it is disclosed by the evidence that the *cestuis que trust* of the complainant have been in possession of said mortgaged property without a valid foreclosure of said mortgage, and if anything was due on said mortgage debt it was due only after an accounting in which said *cestius que trust* should have been charged with rents, incomes and profits, wastes and conversions of said property.

15. Said decree is erroneous in that it is not in con-

formity to the mandate of the U. S. Circuit Court of Appeals on its decision of this cause on a former appeal.

J. M. CHILTON,
W. R. HAMMOND,
Solicitors for Appellants.

Acknowledgment of Service.

Due and legal service of the within assignment of errors, and of a copy of the same, is hereby acknowledged, and all other and further service and notice waived.

June 8th, 1895.

DORSEY, BREWSTER & HOWELL,
B. F. ABBOTT,
Solicitors for Robinson, Trustee.

Filed in clerk's office 8th day of June, 1895.

O. C. FULLER, Clerk.

Petition for order extending time, etc.

To Honorable, The United States Circuit Court of Appeal for the Fifth Circuit.

1. Your petitioner The Alabama & Georgia Manufacturing Company and the Huguley Manufacturing Company and William T. Huguley, respectfully represent to the court that they are defendants to a suit in equity brought by J. J. Robinson, Trustee, in the Circuit Court of the United States for the Northern District of Georgia in which was sought the foreclosure of a mortgage executed to secure the bonds of said The Alabama & Georgia Manufacturing Company.

2. That a decree of foreclosure was entered in said cause on the 30th day of March, 1895, directing a master to sell the mortgaged premises on the 4th day of June, 1895, if the debt ascertained to be due should not be paid before the expiration of 30 days from the date of said decree. A copy of said decree is embraced in a transcript hereto attached as Exhibit "A."

3. That on the 27th day of May, 1895, said final decree was amended by another decree fixing the date of sale on the first Tuesday in July, 1895. A copy of said amendment is hereto attached marked Exhibit "B."

4. That the property is now advertised for sale under the decree as amended and will be sold on the 8th, day of July, 1895, unless a supersedeas is ordered by this Honorable Court.

5. That on the 8th, day of June, 1895, which was within sixty days, (Sundays excluded) from the date of the decree of March 30th, your petitioners filed and the Judge allowed an appeal to this court from said final decree, and at the same time, assignments of errors were filed in said court, and an order was made requiring that a bond in the sum of five thousand dollars be executed to supersede said decree. That on the same day a copy of said appeal papers was served on the solicitors of said Robinson in said cause, and service of same was endorsed by said solicitors as follows: "Due and legal service of the within appeal and of a copy of the same is hereby acknowledged, and all other and further service and notice waived. June 8th, 1895.

DORSEY, BREWSTER & HOWELL,
B. F. ABBOTT,
Solicitors for Robinson Trustee.

All of which will appear as parts of said Exhibit "A."

6. That a Supersedeas Bond was signed and ready to be filed the same day except as to the surety. The delay in preparing and obtaining security on said bond is explained in the affidavits of W. R. Hammond and W. T. Huguley herewith submitted as Exhibit "C" and "D." That under the advice and opinion of Solicitors Hall & Hammond that said bond would be in time if filed on the 10th, said Huguley went to his home in West Point, Georgia, to arrange the brokerage or commission to be paid Dr. J. B. Redwine, a local capitalist of Atlanta who had agreed to sign it. That the arrangements was perfected so as to file the bond on the

10th, when said W. R. Hammond, on a more accurate calculation, advised that the time had expired on the 8th, and that leave to file said bond, would have to be asked of this Honorable Court.

That said bond has been executed, is perfectly solvent and petitioners are ready to file the same, and it is now here shown to the court.

The premises considered, your petitioners pray, that an order proceed from this court directing that said supersedeas bond be filed with the Clerk of the Circuit Court of the United States for the Northern District of Georgia, and, that the Judge of said Court be authorized and required to approve same notwithstanding the expiration of said 60 days from the date of said final decree; and further directing that said bond when approved, shall operate a supersedeas. And petitioners pray for any other order in the cause that may be necessary in order to obtain a supersedeas of said judgment.

Petitioners also pray that the time for filing the transcript of the record in said cause, be enlarged from 60 days from the 8th day of June, 1895, said extension of time being necessary for completion of the transcript of the record.

That the Judge of the court below made such an order on the 21st of June, 1895, one day after the change of the rule by this court.

J. M. CHILTON,
W. R. HAMMOND,
Solicitors Appellant.

Order Extending Time. etc.

United States Circuit Court of Appeals.
For the Fifth District.

HUGULEY MANUFACTURING CO., W. T. HUGULEY AND THE ALABAMA & GEORGIA M'F'G. CO., APPELLANTS,

vs.

J. J. ROBINSON, APPELLEE.

Appeal from the Circuit Court of the United States, Northern District of Georgia.

Upon consideration of the petition of the above named Appellants, praying for an enlargement of the time in which to execute a supersedeas bond and also praying that the time for filing the transcript in said case be extended.

It is ordered:

First, that the time for executing a supersedeas bond in said cause be and the same is hereby extended ten days from this date, such bond to be filed with the clerk of the court below and with sufficient security to be approved by the Judge of the court below, in the sum fixed by said Judge.

Second, for cause shown it is ordered that the time for filing the transcript of the record in said cause is hereby enlarged to sixty days from June 8th, 1895.

DON A. PARDEE, Circuit Judge.

Dated this 25th day of June, 1895.

Filing.—Filed in clerk's office 27th day of June, 1895.

O. C. FULLER, Clerk.

By J. D. STEWART, Deputy.

Supersedeas Bond.

UNITED STATES OF AMERICA,
State of Georgia, Fulton county.

Know all men by these presents that we, The Alabama & Georgia Manufacturing Company, William T. Huguley and J. B. Redwine security are held and firmly bound unto J. J. Robinson, trustee, in the sum of $5,000 for the payment of which well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors or administrators and successors, jointly and severally, firmly by these presents. Dated this 8th day of June, 1895.

The condition of the above obligation in such that whereas in the Circuit Court of the United States for the Northern District of Georgia, in a suit depending in said court, between J. J. Robinson, trustee, complainant and the Alabama & Georgia Manufacturing Company, the Huguley Manufac-

turing Company, and William T. Huguley defendants, a final decree was rendered by said court on, to-wit, 30th March, 1895, against said defendants from which decree they have taken an appeal to the United States Circuit Court of Appeals for the Fifth Circuit.

Now if the said appellants shall prosecute their said appeal to affect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and effect.

THE ALABAMA & GEORGIA M'F'G, CO.,
By W. H. HUGULEY, President,
WM. T. HUGULEY,
J. B. REDWINE, Security.

Order approving bond, approved this 27th day of June, '95.

WM. T. NEWMAN, U. S. Judge.

STATE OF GEORGIA, Fulton county.

In person came before the undersigned J. B. Redwine, who being sworn says that he signed the within bond as surety, and that he is worth at least twenty-five thousand dollars above all debts and liabilities.

J. B. REDWINE.

Sworn to and subscribed before me June 21, 1895.

C. M. CURREN, Notary Public, Fulton county, Ga.

Filing: —Filed in clerk's office 27 day of June, 1895.

O. C. FULLER, Clerk.

By J. D. STEWART, Deputy.

Order Approving Bond.

It is ordered that the bond herewith presented, signed by The Alabama & Georgia M'f'g Co., and Wm. T. Huguley as principal, and J. B. Redwine as surety be approved and filed and the same is hereby allowed as a supersedeas bond in said cause, and that the decree of this court by superseded until the judgment of the U. S. Circuit Court of Appeals be

rendered in said cause, or until the further order of this court.

June 28, 1895.

WM. T. NEWMAN, U. S. Judge.

UNITED STATES OF AMERICA, }
Northern District of Georgia. } S. S.

I, Olin C. Fuller, Clerk of the Circuit Court of the United States of America for the Northern District of Georgia, in the Fifth Circuit, do hereby certify that the foregoing pages numbered from 1 to 542 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of J. J. Robinson, Trustee, against The Alabama & Georgia Manufacturing Company, The Huguley Manufacturing Company and William T. Huguley, as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of said Court to be affixed, at the city of Atlanta, in the Northern District of Georgia, in the Fifth Circuit, this twenty-seventh day of July, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the United States the one hundred and nineteenth.

Seal United States Circuit Court, Northern District of Georgia.

OLIN C. FULLER, Clerk.

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Supreme Court of
The Hugoslav
Union Corps

Bill of Complaint.

United States of America, Northern District of Georgia.

To the Judges of the Circuit Court of the United States for the Northern District of Georgia: J. J. Robinson as trustee for the purposes hereinafter stated who avers himself to be a citizen of and residing in the State of Alabama brings this his bill against the Alabama & Georgia Manufacturing Company, a corporation created under and by virtue of the laws of the State of Georgia and a resident and citizen of said Northern District of Georgia; and against the Huguley Manufacturing Company, a corporation created under the laws of said State of Georgia, and a resident and citizen of said State of Georgia and of the Northern District of said State; and against W. T. Huguley, who your orator avers to be a citizen of said State of Georgia and residing within said Northern District of Georgia.

And thereupon your orator complains and says: That on the 2d day of January, 1884, the said Alabama & Georgia Manufacturing Company executed and delivered to said W. T. Huguley, W. C. Yancey and to your orator as trustees, a certain deed of trust covering and conveying to said persons named and to orator all the property of said Alabama & Georgia Manufacturing Company upon the terms and upon the trusts therein stated for the purpose of securing certain negotiable bonds of said company in principal sum of sixty-five thousand dollars and interest thereon, which deed of trust was accepted by said trustee and duly recorded. A copy of said deed of trust is hereto attached marked exhibit A, as a part of this bill and for certainty as to its provisions the same is hereby referred to.

Said bonds herein named were duly issued by said Alabama & Georgia Manufacturing Company and sold or otherwise disposed of and are now held by various persons and corporations.

The said Alabama and Georgia Manufacturing Company is insolvent and has ceased to do business and has ceased to keep an office in West Point, Georgia, or elsewhere for the transaction of business. That under

and by virtue of a decree in chancery issuing out of the Superior Court of Troup county, Georgia, at term, 1888, all the property of said Alabama and Georgia Manufacturing Company covered by said deed of trust was sold by the sheriff of Harris county, Georgia, on the 1st Tuesday in January, 1890, and purchased by certain persons who afterwards as orator is informed conveyed or otherwise disposed of the same to said Huguley Manufacturing Company, defendant herein. And said last named corporation is now in possession of the same, claiming the said property under said sale. Said sale was made subject in all respects to the rights and lien of your orator as trustee for the holders of said first mortgage bonds. Said W. T. Huguley, defendant herein and named as one of the trustees for said bondholders, claimed at the time of said sale to be interested in the purchase of said property and now claims also to be interested in the property and assets of said Huguley Manufacturing Company. He is interested adversely to your orator as the trustee of said bondholders. In said bond it is provided among other things as follows:

"And it is hereby expressly agreed by the said company with each and any holder of this bond that in case of the non-payment of any interest coupon hereto attached if such default shall continue for six months after maturity and demand of payment, the principal of this bond shall become immediately due and collectable."

Among other things it is provided in said deed of trust for further security of the holders of said bonds and coupons that said Alabama and Georgia Manufacturing Company shall keep said property covered by said deed of trust insured against loss by fire in good responsible companies to the extent of sixty-five thousand dollars ($65,000). Said company has failed to keep said insurance as provided, as orator is informed.

The said Alabama and Georgia Manufacturing Company has failed to pay the interest on said bonds or a large majority of the falling due July 1, 1890, and has failed to pay any of the interest coupons falling due January 1, 1891, and more than six months has elapsed since the said July coupons fell due and they still remain unpaid. No money was on deposit at the place of payment at the time

said July coupons fell due and none deposited within six months thereafter at the place of payment to pay same, and all or nearly all of said July coupons remain unpaid, as orator is informed by the holders thereof.

The said W. C. Yancy has departed this life since the execution and delivery of said deed of trust.

Orator has been notified since the expiration of the six months after the said July coupons fell due by a majority of said bondholders in amount of their election to treat the whole of said principal sum named in the bonds as due under provisions of said bonds; and orator has been requested to begin proceedings to secure the property pledged for the payment of said indebtedness and he deems it to the best interest of the bondholders of said bonds that he should do so.

The premises considered the orator hereby waiving all discovery made under oath from each and all of said defendants he prays:

1st. That an account be taken of the holders of said bonds and the amount for principal and interest due them and each of them.

2d That orator may have a decree in his favor against the said the Alabama and Georgia Manufacturing Company; that it shall pay said sums so found to be due your orator as trustees for such bondholders, together with all costs of suit, including his reasonald solicitors fees by a short day to be named by this honorable court for that purpose; that in default the said Alabama and Georgia Manufacturing Company and any and all persons claiming under it be absolutely debarred and forever foreclosed of and from all equity or redemption in and to said mortgaged premises and every part thereof, and that it shall deliver up to orator all papers, deeds and other writings in its power, custody or control relating to or covering said premises.

And that in default of payment of said sums by a day to be appointed, that your orator as trustee or such other person as may be named by the court in its decree and acting under and in pursuance thereof shall sell the property embraced in said deed of trust upon such notice and terms as the court may direct, and that the proceeds of such sale be under such decree paid to the persons entitled thereto.

3d. That a receiver be appointed to take possession of and hold said property, preserve and protect the same until the final decree is had in this cause.

4th. That said defendants and each of them, their agents and servants be enjoined from in any manner interfering with said property until the further order of the court.

5th. That your orator may have such other and further relief as to the court may seem meet and proper under the facts of the cause.

6th. That the writ of subpœna issued and be served on each of said defendants commanding them and each of them at a certain day and under a certain penalty therein to be inserted personally to be and appear before this court, and then and there to stand to, abide and perform such order, direction and decree as may be made therein. And your orator will ever pray, etc.

DORSEY, BREWSTER & HOWELL,
N. D. DENSON,
ABBOTT & SMITH,
Complainants Solicitors.

United States of America, Northern District of Georgia.

Personally comes J. J. Robinson, who on oath says that the statements made in the foregoing bill are true of his own knowledge except where made upon information and belief and as to such he believes them to be true.

J. J. ROBINSON.

Sworn to and subscribed before me this 20th day of January, 1891.

(SEAL) O. C. FULLER,

U. S. Circuit Court Commissioner, N. D. of Ga.

Exhibit "A."

STATE OF GEORGIA, }
Troup County. }

At a meeting of the board of directors of the Alabama and Georgia Manufacturing Company held at the office

of said company in the city of West Point, State of Georgia, on the 17th day of October 1883, a majority of said board of directors being present the following resolutions was adopted:

Whereas, the creditors of the company, namely: George Huguley, W. T. Walker, W. H. Huguley, W. H. Huguley & Co., and others have signified their willingness to accept in lieu of their present note against the company first mortgage bonds of the company.

It is ordered by the board of directors of the company, that the officers of this company be and they are hereby authorized to issue bonds of the company not to exceed the amount of sixty-five thousand dollars, said bonds to bear date on the (1st.) 7th day of January, 1884, and to run twenty years from date, with the option of the company to pay off or call in any of said bonds after the expiration of five years from the date of the same, said bonds to bear interest at the rate of eight per cent. per annum, with interest coupons attached, payable semi-annually, principal and interest payable at the office of the company in West Point, Georgia. And to secure the payment of the principal and interest of said bonds, the officers of the company be and they are hereby authorized and empowered to execute a first mortgage on all of the real property of the company, including mill, machinery, fixtures and all appurtenances thereto attached, either to the holders of said bonds, or to trustee for their benefit as may agreed upon. Said bonds and mortgage to be signed by the president under the seal of the company, and countersigned by the secretary and treasurer. Said bonds to be issued in such denomination as may be determined upon by the officers of the company. Which said resolution was passed and adopted by virtue of the authority conferred at an annual meeting of the stockholders of said company held on the 27th day of July, 1881, and whereas the officers of said company, to wit: W. H. Huguley, first president, and W. H. Huguley & Co., its treasurers, and W. T. Huguley, its secretary, in conformity with said resolutions have issued the bonds of said company to the amount of sixty-five thousand dollars; each of said bonds for the sum of five hundred dollars due and payable on the (1st.) 7th. day of January, 1904, with

interest coupons attached payable semi-annually on the 7th. day of January and July of each year, for the sum of twenty dollars each, the principal and interest of said bonds payable at the office of the company in West Point, Georgia.

In which said bonds the said company reserve the right and the privilege to pay off and call in all of or any of said bonds and coupons then due and unpaid after the expiration of five years from the date of their issuance, which said bonds are numbered from one to one hundred and thirty inclusive.

Now this instrument made and entered into on this the first day of January, 1883, between the Alabama and Georgia Mfg. Co. of the first part, and J. J. Robinson W. C. Yancy and W. T. Huguley as the trustees of the holders of said bonds, of the second part, witnesseth, That the Alabama and Georgia Manufacturing Company, the said party of the first part, for and in consideration of the premises and for the purpose of securing the payment of principal and interest of said bonds, and the sum of one dollar in hand paid by the party of the second part, hath bargained, sold, transferred and conveyed and by these presents doth bargain, sell, transfer and convey to the said J. J. Robinson, W. C. Yancy and W. T. Huguley, as trustees aforesaid, their survivors and successors, the following real estate to wit: All of a large Island in the Chattahoochee River designated as Island No, Six (6) containing one hundred and forty-three (143) acres more or less: also Island No, Nine (9) containing seven acres more or less, also a small island between Islands numbers nine and six upon which the east end of the factory building rests, containing four acres more or less. All of the three above described islands being in the Twentieth (20) District of Harris county, Georgia. Also all that tract or parcel of land lying on the west side of the Chattahoochie river opposite the above described islands bounded on the east by said river beginning at a point on the west bank of said river nearly opposite the center of the seven-acre island at a black gum, at or near a place known as Sulb's corner—thence a straight line to a point where the land owned in 1868 by Mrs. Freeman, Job Ross and James Campbell joined, known then as the

Ross and Freeman corner, to a pine stake—thence a line to a branch near said stake, and thence to a line down said branch to the said river, and thence down the western bank of the river to the beginning corner—containing sixty-five 23-105 acre more or less, lying and being in Chambers county, State of Alabama, and being a part of section twenty-eight (28) and twenty-nine (29) township twenty-one (21), range twenty-nine (29), as well as a forty (40) foot right of way from the factory building to the public road leading from West Point, Georgia to Berlin Alabama, at any point where the factory company may locate it, including all the tenements and improvements including the cotton mill and all the machinery therein or thereto belonging and all water privileges and riparian rights now owned and enjoyed by the said party of the first part.

To have and to hold to the said J. J. Robinson, W. C. Yancey and W. T. Huguly, their survivors and successors in trust, nevertheless and for the uses and purposes herein set forth, that is to say upon trust for securing and providing for the full and complete payment of the aforesaid sum of sixty-five thousand dollars $65,000) with the interest due and owing by the said Alabama and Georgia Manufacturing Company to the holder or holders of the said bonds or the coupons thereto attached herein before referred to and described, and in order and in the fullest manner to provide for the payment of the bonds aforesaid and the interest thereon at the time and place when and where the same shall respectively fall due and be payable, the said J. J. Robinson, W. C. Yancey and W. T. Huguly, or a majority of them, or their survivors or successors are hereby authorized and empowered, should default be made in the payment of said bonds when they fall due, or in the payment of the interest on said bonds as it shall accrue, then immediately on such default being made known by the holder or holders of said bonds or holder or holders of the coupons attached thereto, and if after notice is served upon the president of said company the same shall remain unpaid for six months after such default shall have been made in the payment of the said interest or principal as the case may be, and at the request of any one or more of the holders of said bonds

or coupons and without any other or further authority from the said Alabama and Georgia Manufacturing Company upon giving sixty days notice of the time and place of sale together with a description of the property in a newspaper published in Atlanta, LaGrange and West Point, Georgia, to proceed to sell at public auction at the office of said company in the city of West Point, Georgia, for cash, the property herein conveyed, or a sufficient amount of the same to pay the amount due and apply the proceeds of sale, first, to the expense of sale, second, to the payment and liquidation of all the bonds and interest due on the same, and the surplus if any, to be paid over to the proper officer of said company, and to execute titles to the purchasers thereof, and in the event the amount realized from the sale of said property shall be sufficient to liquidate the whole of said debt, then the same shall be prorated amongst the holders of said bonds and coupons. And for the further security of the holders of said bonds and coupons, the said Alabama and Georgia Manufacturing Company hereby stipulates and agrees that it it will keep this factory building and machinery insured against loss by fire in good and responsible insurance companies to the extent of sixty thousand dollars, and on their failure to do so the said trustees are hereby authorized to have the same so insured, the expense of the same to be paid in the same manner as is provided by the same payment said bonds and coupons and the said Alabama and Georgia Manufacturing Company hereby reserve to itself the quiet and peaceable possession of all of said property herein contained, and the right to control, use and manage the same and dispose of the products of said mills in such manner as it may see proper, not inconsistent with the purposes herein expressed until after default as herein divided. Now, if the said Alabama and Georgia Manufacturing Company shall pay off and discharge all said bonds and coupons, then, and in that event, this conveyance to be null and void.

In witness whereof, W. H. Huguly, the president of said company, and W. T. Huguly, the secretary, and W. H. Huguly & Co., the treasurers of said company, have hereunto set their hands and affixed the seal of said com-

pany at its office in the city of West Point, on the 2d day of January, 1884.

W. H. HUGULY, (L. S.)
President.
W. T. HUGULY, (L. S.)
Vice President and Secretary.
W. H. HUGULY & CO., (L. S.)
Treasurers.

Signed, sealed and delivered in the presence of
W. E. OSLIN,
L. M. HARRIS, *J. P.*

We, the trustees named in the above instrument, hereby accept the trust imposed by the same.

J. J. ROBINSON, [L. S.]
WM. C. YANCEY, [L. S.]
W. T. HUGULY, [L. S.]

Signed, sealed and delivered in the presence of
W. E. OSLIN,
L. M. HARRIS, *J. P.*

Filed in office for record January 21st, 1884, and duly recorded January 24th, 1884.

J. J. ROBINSON,
Judge of Probate.

Filed in clerk's office 21st day of January, 1891.

O. C. FULLER,
Clerk.

Order to Show Cause.

Read and considered.

It is ordered that defendants show cause before me at the United States Court room at 10 o'clock A. M. on Saturday the 31 of January 1891, why an injunction should not issue and a receiver be appointed as prayed for in the bill.

Let this bill be filed and service be perfected as is usual in equity.

In open court this January 21, 1891.

WILLIAM T. NEWMAN,
United States Judge.

Agreement of Counsel.

The plaintiff in the foregoing bill hereby agrees that he will not for the present press the application for injunction and receiver without giving at least thirty days notice to N. J. & T. A. Hammond, solicitors for defendants. And the defendants reserve the right to call up the said application for receiver, etc., on giving like notice to Dorsey, Brewster & Howell or Abbott & Smith, solicitors for the plaintiff.

This 31 day of January, 1891.

DORSEY, BREWSTER & HOWELL,
ABBOTT & SMITH.
Solicitors for Plaintiff.

N. J. & T. A. HAMMOND,
Solicitors for Defendants.

Amendment to Bill.

The plaintiff now comes and by leave of the Court first had and obtained amends his bill so as to strike from Exhibit A to bill the figure 7 wherever it is used to show the date of January 1884, and insert in lieu thereof the figure 1 so that the same shall read 1 of January instead of 7 of January 1884, where it occurs.

In open court February 26, 1892.

WILLIAM T. NEWMAN,
United States Judge.

I acknowledge due and legal service of the within bill waiving copy, process and copy process.

This 29th January, 1891.

W. T. HUGULEY,
ALABAMA & GEORGIA MANUFACTURING CO.,
Per N. J. & T. A. Hammond, its Solicitors.

HUGULEY MANUFACTURING CO.,
Per N. J. & T. A. Hammond, its Solicitors.

Filing—Filed in the clerk's office 4th day of February 1891.

O. C. FULLER, *Clerk.*

Appearance.

ATLANTA, GA., 10 February, 1892.

To the Clerk of the Circuit Court—You will enter our appearance as solicitors for defendants, the Huguley Manufacturing Co., and the Ala. & Ga. Mfg. Co., in the bill of J. J. Robinson, trustee against them and W. T. Huguley.

N. J. & T. A. HAMMOND,
Attorneys at Law.

United States Circuit Court, Northern District of Georgia.

J. J. ROBINSON, TRUSTEE
versus
ALABAMA AND GEORGIA MANUFACTURING CO. ET AL.

Answer of the Huguley Manufacturing Company and the Alabama and Georgia Manufacturing Company.

These defendants now and at all times hereafter saving and reserving unto themselves all benefit and advantage of exception which can be had or taken to the many errors, uncertainties and other imperfections in the said complainants said bill of complaint contained, for answer thereunto or unto so much and such parts thereof as these defendants are advised, is or are material or necessary for them to make answer unto, these defendants answering say:

1. The citizenship and residences of all the parties named in said bill are admitted as alleged.

2. These defendants are informed and believe that said Alabama and Georgia Manufacturing Company (hereinafter called, for brevity, the old company), did make some sort of mortgage to said J. J. Robinson, W. T. Huguley and W. C. Yancey, but defendants believe that it is not the same as stated in Exhibit A, to said bill, and insist on proof of said mortgage.

3. These defendants admit that said old company did issue bonds. Of the exact form or contents of each of the defendants are ignorant. Who holds the same these defendants do not know, except that they have been informed of the following holders of said bonds as follows:

P. Romare, for Atlanta National Bank..... 4 bonds
M. & L. Lanier .....84 "
N. D. Denson, as representative of M. T. Walker, deceased.. ....20 "
A. T. Dallis..... 4 "
Judge B. F. Ferrill..... "
Mrs. Yancey ... . "
Susie Huguley, Mrs. Lanier and Mrs. Yancey, represented by L. Lanier..... "
W. H. Huguley ..... "
J. H. Nolan..... "
Mrs. Sallie Huguley ..... "

All of which bondholders reside in Georgia, in said district, except said Denson.

4. Whether said old company is insolvent these defendants do now know. That it has ceased to do business as a manufacturing company these defendants admit. From 1882 to July 1888, W. H. Huguley & Co., of West Point, Georgia, was the treasure of said old company. Said treasure firm was composed of W. H. Huguley, W. T. Huguley and J. H. Nolan, all of said West Point, Georgia. The firm carried on there a mercantile business and part of the time a banking business, also; said banking business began in 188 . During all the said six years either said W. H. Huguley or said W. T. Huguley was president of said old company; when one was president the other was vice president. In July, 1888 said W. H. Huguley, W. T. Huguley, J. H. Nolan, J. J. Robinson, A. T. Dallis, L. Lanier, W. S. Jackson, L. D. Hutchinson and J. M. Harrington were made directors and said W. H. Huguley was elected its president. Its business office continued at the said place of business of said W. H. Huguley & Co., in West Point, Ga., where said firm there and ever since up to this moment has continued to do business.

In that state of facts a bill was filed in the Superior Court of Troup county, Georgia, against said W. H. Huguley & Co., by said A. T. Dallis and certain other stockholders of said old company, praying for an accounting between said firm and said old company and for a receiver. H. O. Fisher was appointed receiver and took charge of the mortgaged property aforesaid. Said firm answered,

setting up by cross bill its claim against said old company; and other creditors became parties and set up their claim against said old company. The whole matter was referred to a special master; he reported, and there was on the 15th day of November, 1889, a decree thereon, the perinent parties of which were as follows:

That said W. H. Huguley & Co. should recover of said old company $21,095.00 principal. Interest to Nov. 4, 1889, $2095.55, and future interest at 8 per cent. per annum until paid, all secured by a mortgage dated August 2, 1888, on said property in the mortgage described in the exhibit to said bill, to be levied by mortgage *fi. fa.* on mortgaged property, and said firm recovered of said old company other principal debt of $2455.95, due Nov. 4, 1889, including $324.76, as their attorneys fees, plus further interest on said last principal until paid, and costs, and it was decided that a common law *fi. fa.* issue for both, to-wit, $23,500.00 principal, $2095.55 interest, until Nov. 4th, 1889, and costs.

By said decree the Atlanta National Bank recovered of said old company $30,000.00 principal plus protest fees $6.00, plus fees of their attorney N. J. Hammond $546.44, and also as interest to that date $2371.93 all secured by said mortgage of 2 August, 1888, with a foreclosure therefor of said mortgage on said property and that both a mortgage *fi. fa.* and a common law *fi. fa.* issue therefor, upon application.

It was further therein decreed that S. M. Inman & Co., recover of said old company, $10,000.00 principal $2012.50 interest to date and costs, and that the Lowell Card Company recover of said old company $617.50 principal.

It was therein further decreed that certain other costs and expenses to be paid to officers of court, stenographer, master, counsel for complainants, and Receiver Fisher and a temporary receiver W. W. Harrington, all amounting to $, or some such large sum all of which sums in this paragraph mentioned were mentioned in the 8th subdivision of said decree.

Further in said subdivision it was decreed to be paid as follows:

"F. Whatever part of the interest on the coupons of the first mortgage bonds of the Alabama and Georgia Manu-

facturing Company paid or to be paid by said Fisher under the order of this court of the disposing of the assets in his hands as shall appear by the orders of the chancellor in this regard.

G. These last mentioned items to be taxed by the clerk upon such orders of the chancellor and the clerk shall also tax all other costs not herein before specially provided for."

Said decree further provides as follows:

"10. The dignity of the respective liens herein set forth are as follows:

First—Said remainder of over due interest on the first mortgage bonds of said the Alabama and Georgia Manufacturing Company if any shall be reported by the chancellor.

Second—The other items of costs and expenses mention in item eight (8) of this decree.

Third—The mortgage debts due to said W. H. Huguley & Company and said Atlanta National Bank, these two being of equal dignity.

And Fourth—The unsecured debts of W. H. Huguley & Co., S. M. Inman & Co., The Lovell Card Company."

And it further provided "13. It is further ordered and decreed that all the property of the Alabama and Georgia Manufacturing Company, herein described be sold as an entirety by said Receiver Fish, after advervisement as sheriff's sales are advertised and said sale to be conducted within the legal hours of sheriff's sales of the first Tuesday in January (1890) next to the highest bidder for cash except that any judgment against said Alabama and Georgia Manufacturing Company specified herein may be rated as cash according to its said dignity except sufficient to pay plaintiff's attorney's fees thereon and said receiver may and shall distribute the proceeds of such sale after said attorney's fees are paid according to the said dignity of said claims as between the respective owners thereof. No claim shall be treated as cash until those of higher dignity are paid. Said receiver shall and will report his action in the premises to the undersigned chancellor. Said sale shall be made in Harris county, Georgia, where said property in Georgia is situated, this November 15, 1889. S. W. HARRIS,

J. S. C. C. C."

This was the decree under which said mortgaged property was sold, not by the sheriff, but by said receiver, Fisher, and was purchased as alleged by certain persons who afterwards did convey title thereto to said Huguley Manufacturing Company, which, for brevity, will hereinafter be called the new company. The bidders at said sale bid for said property the sum of $69,000.00. The next highest bid to their own was $68,500.00, which was by persons in no way connected with those who did purchase, and who had none of the claims which were to be treated as cash at said sale. That shows the value of said property at that time. All said bidding was for the property, subject to said first mortgage.

Neither at the time of said sale nor since did said W. T. Huguley have any interest in said property so bought, except as a member of said firm of W. H. Huguley & Co. This defendant does not know or have any information of any other claim of interest by said W. T. Huguley in said property.

This defendant says that it has no information about insurance on said property according to and under said first mortgage except as follows: Insurance was kept thereon before said litigation above $65,000.00, but so far as this defendant is advised, never before said sale was there any insurance in the name of or on its face for the benefit of the said trustees. If the insurance ever fell below the sum above named they are advised it was only during the said litigation, when, because the mills were empty and idle, some insurance companies would not insure as before. Since said sale said property has been insured by said purchasers and the Huguley Manufacturing Company for the benefit of said trustees, and is now so insured as follows:

London Fire Ins. Co., England,	Expiring	Feb.	5, 91.	$10.000	Renewed
Macon Fire Ins. Co., Ga.	"	"	5, 91.	2.500	"
Liverpool, London & Globe, Engl.	"	"	17. 91.	25.000	"
Scottish Union & National.	"	"	17. 91.	5,000	"
" " "	"	March	19, 91.	5,000	
Commonwealth Union	"	"	27, 91,	12,500	
London Assurance Corp.	"	June	25. 91,	5.000	
				$65,000	

All of the above in favor of Trustees for 1st Mortgage Bondholders.

Hartford Ins. Co., Conn.	July 7,	$10,000
Royal Ins. Co., England	" 8,	10,000
Phœnix Assurance "	" 22,	10,000
		$30,000

Loss. if any, payable to Huguley M'f'g Co.

Commercial Union, England	July 8,	$25,000
Orient	" 8,	15,000
Rome	" 8,	7,500
St. Paul Fire & Marine, St. Paul. Minn..	July 10.	2,500
		$50,000

Los. if any, payable to St. Louis Trust Co.

London & Lancashire, England.	July 12,	$15,000
American Fire Ins. Co., New York.	" 12,	15,000
Sun Fire Office,	" 12,	10,000
New York Fire Ins. Co.	" 12,	2,500
Guardian	" 12.	2,500
Union Assurance, England.	Aug. 23.	5,000
Commonwealth, N. Y..	" 25.	5,000
		$55,000

Loss. if any, payable to Huguley M'f'g. Co.

This was intended to be and these defendants claim was a compliance with the obligation with said old company in that regard in said first mortgage. At any rate, it was known and approved by W. T. Huguley, one of the said trustees, residing in Georgia. Said Robinson, trustee, residing in Alabama, and so far as these defendants knew, in no way concerned himself about the same. Certainly there was no complaint by him to these defendants until the vague one in the bill set forth.

These defendants state that the facts about payments and non-payments of the interest on said bonds are as follows: The same was promptly paid at maturity by said old company at the said store of W. H. Huguley & Co., until the mortgaged property was put in the hands of a receiver as aforesaid.

While said property was held by said Fisher, receiver, he had for his banker, the Atlanta National Bank, at Atlanta, Georgia, and paid the interest at said bank, or it had it done by its correspondents M. & L. Lanier, of West Point, Ga. All the coupons presented at one or the other of said banks were so paid.

L. Lanier was not a party on the record in said litigation with the old company, but was a witness for complainants therein and a most active worker for them. Be-

fore said decree was taken complainants' counsel had to and did consult said L. Lanier to see if he would consent thereto and he did so consent. The sale occurred after that, and after the sale said M. & L. Lanier for said Atlanta National Bank and said Atlanta National Bank paid off the coupons due in July, 1891, plus the interest due thereon for the time it had been in default. So the coupons due in January, 1890, were paid off with interest thereon in July, 1890. It was paid under notice like the one below mentioned *mutatis mutandis*.

Intending in good faith so to pay the coupons due in 1890 and interest thereon, promptly, to each and every holder thereof on the 29th of December, 1890, D. Jannopoulo, the president of the Huguley Manufacturing Company, wrote to the Constitution Publishing Company at Atlanta, Georgia, to publish the following notice: "Notice.—All coupons due July 1, 1890, to the first mortgage bonds of the Alabama and Georgia Manufacturing Company, will be paid on presentation at the Atlanta National Bank, Atlanta, Georgia, by said bank.

HUGULEY MANUFACTURING COMPANY,
D. Jannopoulo, President."

The letter of said D. Jannopoulo, president, sending said notice requested that it be inserted in the daily of 31st of December, January 1 and 2. It was so published except that the first insertion was on January 2, 1891.

On the said 29th day of December, 1890, said Jannopoulo, president, also wrote said Atlanta National Bank to pay said July coupons, and enclosed in the letter the money, $2678, to be used by said Atlanta National Bank in payment of said coupons due July 1, 1890, and interest thereon. The regular time for the transmission of letters from St. Louis, Missouri, the home of said Jannopoulo, where said letters were written and mailed, was such that they should have reached Atlanta by 6:40 o'clock P. M., December 30, 1890. In Atlanta at that time there were three deliveries per day, to-wit: at the Atlanta National Bank perhaps sent for its mail. The banking hours of said Atlanta National Bank were from 9 A. M. to 2 P. M. daily except Sundays.

On the 2d of January, 1891, at the instance of said trus-

tee, W. T. Huguley, N. J. Hammond, during the morning banking hours, went to T. Romare, vice president of said Atlanta National Bank, and told him that said W. T. Huguley wished to know whether Mr. Jannopoulo had provided for paying said July interest coupons and interest thereon. Said Romare said that he had not. In answer to a question whether he would pay same on a telegraphic request of said Jannopoulo, said Romare answered he would. When this was reported to said Huguley by said Hammond, said W. T. Huguley telegraphed said Jannopoulo, and in the afternoon answer came to care of said Hammond, who read same. It told of said provision published in the said *Constitution* for said payments. Said Hammond went at once to said Atlanta National Bank, after banking hours, and failing to find the said Romare, told Mr. Currier, the cashier of said Atlanta National Bank, of said dispatch, who said he had instructions to pay and would do so as advertised, and upon said Hammond's suggestion, promised to telegraph to said M. & L. Lanier to pay said July 1890 coupons and interest thereon. And said Currier promised to telegraph and defendants believed he then did so telegraph. Said M. & L. Lanier were the regular correspondents of said Atlanta National Bank and made no objections to such sub-agency but accepted the same. Up to the receipt of that dispatch of said M. & L. Lanier none of the July 1890 coupons had been presented either in December 1890 or in January 1891, nor had any demand of payment on them then made any where during those months of December nor January after said dispatch was sent to them.

One of the said M. & L. Lanier pretended to bondholders that his house had a dispatch from the Atlanta National Bank to pay the coupons due 1st of January 1891, but no authority or means to pay those due July 1 1890.

Several times said Hammond was in the Atlanta National Bank and talked with said Romare who told him that said Laniers had paid some coupons due January 1, 1891, but that none due July 1 1890, had been presented to them for payment. If they had paid any due January 1 1891, it was without such instructions from the Huguley Manu-

facturing Company or of any one else so far as these defendants are aware.

The Atlanta National Bank paid on coupons due January 1, 1890, and interest on same as follows: July 8, 1890, $300.00—July 11—$1414.40, and $756.00 July 23, $700.00 September 22, $315.60 and September 26—$120.00. It paid on coupons due July 1, 1890, and interest due thereon as follows: Jan. 5, 1891, $4.20; Jan. 8, 1891, $289.80; Jan. 14, 1891, $164.00, and Jan. 23, 1891, $160.00.

These defendants have no later report.

The Atlanta National Bank has never notified either of these defendants of its unwillingness to act as agent to pay off said interest nor of any unwillingness to accept same on the bonds held by it nor given any notice to either of them of any such unwillingness by said Laniers to act as their sub-agents in this matter, nor did Laniers give such notice.

After this bill was filed, said Jannopoulo, president, came to Georgia he found that the bill was filed by Abbott & Smith, the regular attorneys of the Atlanta National Bank, joined by other counsel and that said Abbott had declined to state what bondholders desired the suit begun. Said Jannopoulo then went to West Point, Ga., and found that by showing the telegram purporting to authorize him to pay the January, 1891, interest, but not that of July, 1890, and by representing that the property was not insured as required as by said first mortgage, L. Lanier deceived some and they joined with others, asked said Robinson to file this bill.

Among those who made the request was the Atlanta National Bank and on the faith of that request they were joined by said Denson representing W. T. Walker's estate holding 20 bonds. This was learned from Robinson and said Denson. After said Jannopoulo learned that, he came to Atlanta and without disposing what had been learned at La Fayett, Alabama (though others may have disclosed same), called on the said Atlanta National Bank for a statement of what it had paid and obtained the one copied above. That was on the 29th of January, 1891—since then Mr. Elliott has received the July 1, 1890, interest on his 11 bonds, $226.60.

These defendants say that the officers of said old company remain as hereinbefore stated and that many of said bonds are owned or held by one or more of them, that the law of the old company's charter, allowed it to change its place of business to either LaGrange, Columbus or West Point, Ga. West Point, Ga. was its place of business when the bonds were issued and they and the interest on them were made payable at the old company office. No action of the old company has changed its office from said W. H. Huguley & Co.'s said place of business. If in law that be held to be its place of business, these defendants say that though no money was there deposited to pay the same, the other trustee's place of business was there, and had a demand been made there the person making the same would have been told where to get his money, or been paid there. No demand was made there. But these defendants aver that after the old company ceased manufacturing by reason all the facts aforesaid, there was an offer to change the place of paying the coupons to the Atlanta National Bank, and that offer was accepted by the bondholders, who took the money from that bank, or M. & L. Lanier as its subagent when the January 1890 coupons were paid. Defendants claim that that made Atlanta Ga., that place of future payments, at least until notice to the company was given by some holder. No such notice was given.

These defendants aver that there was a *bona fide* intention that there should be no default as to said coupons so as to make said bonds due, and that said Jannopoulo sent the money to the Atlanta National Bank on 29th December 1890, after taking the advice of his attorney, Mr. Orrick, that that was right. It was sent in time and was received in time at said bank, it is claimed by said Atlanta National Bank, that it was not opened and put on its books until the 2d of January, 1891, because the 1st of January 1891, was a legal holiday in Georgia. If a holiday as claimed would excuse said bank from receiving said money and entering its trust as claimed, it would also excuse payment on that day. These defendants do not concede that the said Atlanta National Bank is so excused.

These defendants insist that so far as the forfeiture is

concerned no wrong was done said bondholders in taking time after the maturity of the coupon for paying same. Said Jannopoulo had advanced large sums of money in and about the purchase of said property, aggregating say $55.000.00 and had spent say $5000.00 in putting up new houses and other improvements in same, and has contracted and is now spending an additional $5000.00 in machinery and betterments; said W. H. Huguley & Co., had put therein certain finding, etc. worth $1500.00 and the whole property had been greatly improved and was in full operation when said bill was filed, and is now in full operation. Said Laniers are interested in a rival cotton mill on the same river about 2½ miles above this mill and these defendants think said Laniers are much more interested in crippling the Huguley Manufacturing Company than in collecting said coupons or bond. These defendants say that they are continually ready and offered and do still offer to pay them at said Atlanta National Bank, and if any bondholder objects to the place will pay him elsewhere at his option.

They insist that to hold said debts wholly due under the foregoing circumstances and would be contrary to said contract, and would be a fraud upon the right of the Huguley Manufacturing Company and the Alabama and Georgia Manufacturing Co. These defendants accept the waiver made by complainant as to verifying this answer, and therefore do not swear to the same, but will prove it all to be true.

They pray to be discharged hence with their reasonable costs most unjustly incurred by bringing this bill under the facts aforesaid.

N. J. & T. A. HAMMOND,

Solicitors for the Huguley Manufacturing Company and the Alabama and Georgia Manufacturing Company.

JOHN C. ORRICK,

Solicitor for Huguley Manufacturing Company.

Filed in clerk's office 9 day of June, 1891.

O. C. FULLER, *Clerk.*

Amending its answer the Huguley Manufacturing Company says that it is the owner of all the said mortgaged

property subject to said mortgage of $65,000.00 and interest having bought the same from the purchasers at said receiver's sale, They pray if said $65,000.00 mortgage be by decree foreclosed in this case that the decree shall protect the Huguley Manufacturing Company by decreeing that any surplus after paying the mortgage for $65,000.00 and interests and costs shall belong to the Huguley Manufacturing Company and for such other relief as may equitable.

This 13 Nov. 1891.

N. J. & T. A. HAMMOND.
Atty's for the Huguley Mfg. Co.

Let the above amendment be considered as of file on this 13th Nov. 1891 as part of said answer.

DORSEY, BREWSTER & HOWELL.
ABBOTT & SMITH,
N. D. DENSON,
Sols. for Plff.

Filed in clerk's office 13 day of November, 1891.
O. C. FULLER, *Clerk.*

Final Decree.

In the Circuit Court of the United States for the Northern District of Georgia. March Term, 1891.

J. J. ROBINSON, TRUSTEE,
versus
THE ALABAMA & GEORGIA MANUFACTURING CO., ET AL. } No. 360. In Equity.

This cause came on to be heard, at the present term, and was argued by counsel, and upon consideration thereof, it is ordered, adjudged and decreed as follows:—

1. That the plaintiff, J. J. Robinson, as trustee for the holders of the bonds and coupons of the Alabama & Georgia Manufacturing Company, one of the defendants herein, do recover of and from said Alabama & Georgia Manufacturing Company the sum of sixty-five thousand ($65,000.00) dollars principal, due on one hundred and thirty bonds of said company, secured by deed of trust covering the property hereinafter described, and the sum

of ..... dollars due on the unpaid coupons on said bonds, and the sum of ..... dollars interest due on said coupons, said amounts to be ascertained by the special master to be hereafter provided for, and the further sum of ..... dollars, as costs, said costs to include one hundred and twenty dollars to be paid to counsel for commissioners fees for taking testimony, in lieu of statutory commissioners fees.

2. It is further ordered, adjudged and decreed that said Alabama & Georgia Manufacturing Company shall pay, or cause to be paid, said several sums recovered against it in the first paragraph of this decree, on or before the 1st day of July, 1892, in default whereof the property covered by said trust deed fully set out in plaintiffs bill, and hereinafter described, shall be sold as hereinafter provided, and all equity of redemption in and to said property and premises, and every part thereof, shall be and the same is hereby barred and forever foreclosed.

3. It is further ordered, adjudged and decreed that if the said Alabama & Georgia Manufacturing Company shall fail to pay or cause to be paid into court said sums as provided in the proceeding paragraph, then Alfred E. Buck as marshal of this district shall proceed to sell at public outcry, within the legal hours of holding sheriff's sale on the first Tuesday in September, 1892, before the court house door in Fulton county, Georgia, to the highest and best bidder after having previously advertised for 30 thirty days in the following named public gazettes published in the city of Atlanta, to-wit, the Atlanta *Constitution* and the Atlanta *Evening Journal*, all and singular the following described real and personal property, to-wit:

"All of a large island in the Chattahoochee river designated as island number six containing one hundred and forty-three (143) acres, more or less; also island number nine, containing seven (7) acres, more or less; also a small island between islands numbers nine and six upon which the east end of the factory buildings rests, containing four acres or more or less; all of the three above described islands being in the twentieth (20) district of Harris county, Georgia; also, all that tract or parcel of land, lying on the west side of the Chattahoochee river opposite the above described islands, bounded on the east

by said river, beginning at a point on the west bank of said river nearly opposite the centre of the seven acre island, at a black gum, at or near a place known as Sells' corner, thence a straight line to a point where the land owned in 1868 by Mrs. Freeman, Job Ross and James Campbell join, known then as Ross and Freeman corner to a pine stake, thence a line to a branch near said stake, thence a line down said branch to said river, and thence down the western bank of the river to the beginning point, containing sixty-five and twenty-three one hundredths (65.23) acres more or less, lying and being in Chambers county, of the State of Alabama, and being part of section twenty-eight and twenty-nine (28 & 29), township twenty-one (21), range twenty-nine (29), as well as a forty foot right of way from the factory building to the public road leading from West Point, Georgia to Berlin, Alabama, at any point where the factory company may locate it, including all tenements and improvements, including the cotton mill and all the machinery therein, or thereto belonging, and all water privileges and raparian rights, now (or hereafter) owned and enjoyed by the said Alabama & Georgia Factory."

4. It is further ordered, adjudged and decreed that said commissioner shall require a cash payment from the highest and best bidder at the sale at the time said property is knocked down to said bidder, of ten thousand ($10,000) dollars. Any balance on the bid that may be due after paying said sum of $10,000 may be paid in said first mortgage bonds or second mortgage bonds as cash, in the proportion that such bonds would be entitled to share in the proceeds of the sale on distribution; said bonds to be delivered into court for credit or cancellation, according as they may be paid in part or wholly. Said balance must be paid in ten days after the sale.

5. Said marshall shall report said highest bid and payments of cash and of bonds, if any is paid in bonds, back to this court, and on confirmation of such sale and the payment of the balance as herein allowed or in cash. said marshall shall execute good and sufficient conveyance of the title of the said property to such purchaser.

6. It is further ordered, adjudged and decreed that the said defendants, the Alabama & Georgia Manufacturing

Company and the Huguley Manufacturing Company, shall surrender to the purchaser the mortgaged property sold and conveyed, upon the execution, approval and delivery of the marshall's deed thereto; and as further assurance, shall, on the approval and delivery of said marshall's deed convey their title to all the property therein described to said purchaser, and deliver up all the prior deeds to the same in their possession.

7. It is further ordered, adjudged and decreed that at said sale the one hundred second mortgage bonds issued by the Huguley Manufacturing Company to the St. Louis Trust Company as trustee, or any part of them issued under said second mortgage to said St. Louis Trust Company as trustee, shall be accepted as payment on account of purchase as to any excess over the amount of said first mortgage bonds of said Alabama & Georgia Manufacturing Company and their interest and the costs of suit.

This shall not interfere with the requirement to pay said $10,000 in cash however. Should there remain still a balance in the hands of the said marshal after the payment first of all sums due on said first mortgage bonds, principal, interest and costs as aforesaid, and after paying to said the St. Louis Trust Company as trustee the said second mortgage bonds, principal and interest, which are hereby ordered to be so paid, as being a second lien on said property—said balance shall be paid to said Huguley Manufacturing Company or its attorney of record.

8. All questions relating to the compensation of the master, marshall for sale and complainant's solicitors out of the fund brought into court, are reserved for determination on distribution thereof.

9. Either party may except to this decree or to any part thereof.

In open court this 30 day of May, 1892.

WILLIAM T. NEWMAN,
U. S. Judge.

Now at the signing of this decree and before and when it is signed come said defendants and except to the said decree on the ground that under the pleadings and evidence in the decree is wrong, the bonds of Ala. & Ga.

Mfg. Co. not being due as alleged by plff. trustee and for other reasons apparent on the record.

This 30 May, 1892.

N. J. & T. A. HAMMOND.

Petition for Appeal.

Bill to Foreclose Mortgage. In the Circuit Court of the United States, for the Northern District of Georgia.

J. J. ROBINSON, TRUSTEE,
Plaintiff,
vs.
THE ALABAMA & GEORGIA MANUFACTURING COMPANY. THE HUGULEY MANUFACTURING COMPANY & WM. T. HUGULEY,
Defendants.

The above named defendants the Alabama & Georgia Manufacturing Company, the Huguley Manufacturing Company and Wm. T. Huguley, conceiving themselves aggrieved by the decree foreclosing said mortgage, entered on the 30th day of May, 1892, in the above cause, do hereby appeal to the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana. Said defendants (except Wm. T. Huguley) have heretofore prayed an appeal in this cause and for leave to supersede the said decree; which appeal and leave was granted but exigencies having arisen by reason whereof the bond on ten thousand dollars required for a supersedeas was not given and said appeal was abandoned and the clerk was instructed by atty for said appellants not to send up the record. Said defendants, the Alabama & Georgia Manufacturing Company, the Huguley Manufacturing Company and Wm. T. Huguley now pray that an appeal from said decree be allowed, without superseding the same, and on bond with security being given for the costs of appeal in said cause, and said appellants now tender their bond with two good and sufficient securities, and pray that the same be approved and ordered filed.

This 21st day of November, 1892.

JOHN M. CHILTON,
Solr. for Appellant.

Order Allowing Appeal.

U. S. CIRCUIT COURT.
Northern District of Georgia.

And now on this the 21st day of November 1892, it is ordered that the bond tendered for costs of the appeal be and is hereby approved and that the appeal be allowed as prayed for and the clerk send up the entire record to this date.

WM. T. NEWMAN,
U. S. Judge.

Petition for Restitution, Etc.

J. J. ROBINSON, TRUSTEE, &C,
versus
THE ALABAMA & GEORGIA MANUFACTURING CO., THE HUGULEY MANUFACTURING CO. and WILLIAM T. HUGULEY.

In Equity in the Circuit Court of the United States for the Northern District of Georgia.

To the Honorable the Circuit Court of the United States for the Northern District of Georgia, and to the Judges and Justices thereof: The Alabama and Georgia Manufacturing Company and the Huguely Manufacturing Company, each a corporation under the laws of the State of Georgia, file this petition, in the above entitled cause, against L. Lanier, A. T. Dallas and J. T. Kirby, who reside in said Northern District of Georgia, and the "Galeton Cotton Mills Company," a corporation organized under the laws of the State of Alabama, but having its principal place of business at West Point, in said Northern District.

Answer thereupon your petitioners complain and say:

1st. That on the 21st day of January 1891, J. J. Robinson filed his bill in this court against petitioners and W. T. Huguley, in and by which, he, as trustee, prayed a foreclosure of a certain mortgage therein alleged to have been executed to him and others, as trustees by said Alabama and Georgia M'f'g. Company, of date January 2d, 1884, upon its factory, machinery and lands therein described, to secure an issue of sixty-five thousand dollars in bonds and interest thereon said bonds bearing date on

the 7th day of January 1884, and to run 20 years, and to bear interest at the rate of eight (8) per cent. per annum, payable semi-annually, principal and interest payable at West Point, Georgia.

It was further alleged in said bill, that said Alabama & Georgia M'f'g. Company had failed to pay the interests maturing on said bonds July 1st 1890, or a large part thereof, and that it was one of the terms of each of said bonds that "in case of the non-payment of any interest coupon hereto attached, if such default shall continue for six months after maturity, and demand of payment, the principal of this bond shall become immediately due and collectable."

It was alleged that said failure to pay had continued for more than six months after demand made, all which will more fully appear from said bill and the exhibits thereto, which are referred to as part of this petition.

2nd. Petitioners aver that they answered said bill, and that upon the issues so made up, testimony was taken. That it was disclosed by the testimony so taken, that holders of some of the said bonds had accepted, after the first day of January, 1891, the interest due July 1, 1890, while other holders had not accepted said interest.

3rd. Petitioners aver that, without ordering a reference or ascertaining otherwise the number and amount of bonds on said interest had been accepted, this Court, on the 30th day of May, 1892, rendered a final decree whereby it was adjudged and decreed that said J. J. Robinson, as trustee aforesaid, recover of said Alabama & Georgia M'f'g. Co. the sum of sixty-five thousand dollars, said sum being the entire amount of the bonds secured by said mortgage together with accrued interest thereon, and interest on said interest, and costs of suit. It was further adjudged, that unless said sums should be paid by the Alabama & Georgia Manufacturing Company on or before the 1st day of July, 1892, the said mortgaged property, which is fully described in said decree, should be sold by the Marshal of said District on the first Tuesday in September, 1892. Said decree also contained directions for putting purchaser in possession on confirmation of the sale, and other directions, all of which will fully appear by the decree itself, to which reference is here made.

4th. Petitioners allege that the required payment was not made by the Alabama & Georgia M'f'g. Company, and that said mortgaged property was exposed to sale and sold by the United States Marshal on the first Tuesday in September, 1892, under said decree.

That said L. Lanier, A. T. Dallas and J. T. Kirby, who were a committee of said bondholders chosen by them for that purpose and who acted in the premises for said bondholders, became the purchasers at the sum of sixty-six thousand dollars.

Petitioners aver that said committee paid down the sum of ten thousand dollars in cash, required by the terms of said decree, which was applied in part, to counsel fees for the solicitors of the complainant, compensation to the trustee for filing the bill, and court costs, and the remainder about $4,500 was paid out to Mrs. Sallie H. Huguley on account of some six thousand dollars of said bonds owned by her, she declining to participate in the reorganization with the view to which the property was purchased, and that being her pro rata of the purchase money.

Petitioners allege that said entire bid of sixty-six thousand dollars, except said sum of $10,000, was paid in bonds and coupons of the Alabama & Georgia M'f'g. Company as authorized by the terms of said decree, and with said Lanier, Dallas and Kirby represented in making the purchase.

Petitioners allege that said Lanier, Dallas and Kirby filed their petition in said cause on the 14th day of September 1892, setting forth that they, representing all the bondholders of said company, had purchased the property embraced in the decree and that in said purchase, they had acted as the agents of all the bondholders except the owners of seven thousand dollars, principal and interest.

That they had paid ten thousand dollars, and had bonds represented by them as agents of the purchasers and as their own, aggregating fifty-eight thausand dollars and interest ready to pay in on said purchase under the decree; and would have the account stated, by the consent of the holders of seven thousand dollars of bonds not interested in the purchase, when the Court should be ready to pass upon the question of confirming the sale.

The prayer of the petition was that the sale might be confirmed the 15th of September 1892.

A copy of said petition, with the order of the Judge there on, setting the 15th day of September 1892 as the time for hearing the same is hereto attached marked "exhibit A," and made a part hereof.

Petitioners allege that on 15th September 1892, the Marshal filed a report of said sale, and on the same day, on the report of the Marshal, and on the petition of L. Lanier, et al., said sale was confirmed and the Marshal was directed to convey to said purchasers named the mortgaged premises described in said decree.

6th. Petitioners allege that at the date of said final decree and of the sale and of the confirmation of the sale, the Huguley Manufacturing Company was in possession of said mortgaged premises, and actively operating the factory thereon situated, in which was 200 looms, 7000 spindles and other machinery. That on the confirmation of the sale, said Huguley Manufacturing Company turned over to the purchasers said mortgaged premises, as they were required to do by the terms of said final decree, and said purchasers, or some of them, subsequently organized themselves into a corporation known as "THE GALETON COTTON MILLS," and under the latter name, said factory has been actively operated since the confirmation of said sale.

Petitioners aver that the rents and profits of said mortgaged premises received by said vendees, and those claiming under them during said time, have amounted to a large sum, to-wit, more than Fifty Thousand Dollars over and above all expenses. And they aver that the rental value of said premises, during said term, would have been a large sum, to-wit, Fifty Thousand Dollars.

7th. Petitioners allege that on the 21st day of November, 1892, they duly prayed an appeal from said final decree of 30th day of May, 1892, to the United States Circuit Court of Appeals for the Fifth Circuit. That said appeal was duly allowed, and a bond for the costs of said appeal was duly approved in this Court, and said cause duly removed to said Circuit Court of Appeals, and there submitted. That, thereafter, to-wit: on the 30th day of May, 1893, said Circuit Court of Appeals reversed and annulled said

final decree, as will fully appear from the Mandate of said Court and the opinion rendered in said cause, and which are here referred to as parts hereof.

The premises considered, the petitioners pray that said final decree of May 30th, 1892, and said sale of said mortgaged property, made thereunder and the decrees confirming the same, be set aside and annulled, and that the said mortgaged premises be restored to the Huguley M'f'g. Company from whose possession it was taken.

In this connection, petitioners deny that they are liable to refund any part of the said ten thousand dollars, but should it be held that they should refund the same or any part thereon then they hereby offer to refund all or so much thereof as it may be held to be their duty to refund; but they aver that the value of the rents and profits during the time the Huguley M'f'g Co., has been out of possession as aforesaid, is very much larger than said sum, and they pray that if they are liable for any part of said sum, it may be deducted from said rents and profits.

Petitioners pray that it may be referred to some suitable person, as Master, to ascertain and report the value of the rents and profits of said mortgaged premises from the time that they were turned over by the said Huguley M'f'g. Company to the time when the possession thereof shall be restored to said Company under the order herein prayed, and any waste or damage done to any of the property turned over under said sale, or the value of said property converted by said defendants.

Petitioners further pray that any balance which may be found due to either of your petitioners, upon such an accounting, may be applied—

1st. To the repayment of such portion, if any, of the said sum of ten thousand dollars as petitioners may be held liable to refund.

2nd. Next to the payment of any interest in arrears on said sixty-five thousand dollars on said bonds, and

3rd. Lastly, that any remainder may be decreed to be paid over to the Huguley M'f'g. Company as the successor in interest to the Alabama & Georgia M'f'g. Company.

And if mistaken in the special relief prayed, petitioners pray for such other and further, or different relief, as the nature of the circumstances of their case may require as to equity shall seem meet.

Petitioners pray that this Honorable Court make an order requiring that notice issue to said L. Lanier, A. T. Dallas and J. T. Kirby and said "Galeton Cotton Mills," requiring each to show cause on a date to be named by your Honors why the relief herein prayed should not be granted; and that service be perfected on the said Galeton Cotton Mills by serving said notice on said L. Lanier, who is the President, and whose place of business is in said Northern District of Georgia.

JOHN M. CHILTON, ALLEN FORTE,
BIGBY, REED, BERRY & FOTTE,
Solicitors for Petitioners.

Exhibit A.

Petition L. Lanier et al., for decree of Confirmation.

J. J. ROBINSON, Trustee,	Decree of Fore-
vs.	closure in Cir-
ALABAMA & GEORGIA MANUFACTURING	cuit Court U.
COMPANY ET AL.	S., N. Dist. Ga.

To the Hon. W. T. Newman, Judge, &c.: The petition of L. Lanier, A. T. Dallas and J. T. Kirby shows that they representing all the bondholders of said compuny purchased the property embraced in said decree on the first Tuesday in September, 1892 at public outcry at and for the sum of sixty-six thousand dollars, they being the highest and best bidders. In said purchase they acted as agents for all the bond holders except the owners of seven thousand dollars principal and interest. They paid ten thousand dollars cash on the spot.

Under the decree "any balance due on the purchase may be paid in the bonds of the Company as cash, in the proportion that such bonds would be entitled to share in the proceeds of the sale on distribution, the bonds to be delivered into court for credit or collection according as they may be paid in part or wholly."

Your petitioners have said bonds represented by them as agents of the purchasers and as their own aggregating $58,000 and interest ready to pay in on said purchase according to said decree and will have the account stated by consent of the holders of said $7,000 of bonds not interested in the purchase when the court is ready to pass on the question of confirming the sale.

The expenses have not been agreed on in fact, that is the Master's compensation, the marshal's compensation and perhaps some other items of cost.

Your petitioners now come and asked that the sale be confirmed and said items of cost be fixed and that the court will pass on the same on the 15th inst. at 10 o'clock a. m., and that the court pass such other order in the premises as may be proper.

ABBOTT & SMITH,
DORSEY, BREWSTER & HOWELL,
Solicitors for Plaintiff's and Petitioners.

It is ordered that the Solicitor for defendants and the holders of said bonds mentioned in this petition be served and that they show cause before me on the 15th inst. at 10 o'clock a. m. why the prayer of this petitioner should not be granted.

WM. T. NEWMAN, U. S. Judge.

Filing.—Filed in Clerk's Office 10th day of July, 1893.
O. C. FULLER, Clerk.

Due and legal service of this petition acknowledged. Copy waived July 28th, 1893.

B. F. ABBOTT,
DORSEY, BREWSTER & HOWELL,
Solicitors for Respondents.

In the Circuit Court of the United States for the Northern Disirict of Georgia, August Rules, 1893.

ALABAMA & GEORGIA MANUFACTURING COMPANY ET AL., Complainants, *versus* L. LANIER, ET AL., Respondents.	Petition, etc., in equity filed 10 July, 1893, in case No. 360, in eq. in said court.

To O. C. Fuller, Clerk U. S. Circuit Court:

You will please enter our appearance for respondents in the above stated case.

B. F. ABBOTT,
DORSEY, BREWSTER & HOWELL,
Solicitors for Respondents in said petition.

At Atlanta, Ga., this 2nd day of August, 1893.

Answer.

J. J. Robinson, Trustee,	In equity in
versus	Circuit Court U.
The Alabama & Georgia M'f'g Co.,	S., for Northern
Huguley M'f'g Co., and	District of Geor-
W. T. Huguley.	gia.

Petition, &c., filed July 10, 1893.

And now come L. Lanier, A. T. Dallas, J. T. Kirby and the Galeton Cotton Mills, and, without waiving demurrer filed by them to the petition of said two corporations, defendants above named answer said petition as follows:

All allegations contained in said petition in paragraphs from one to five inclusive, are made on matter which is of record in the cause, and without admitting that the same are correct, as stated in the petition, respondents pray that the record in said cause may be referred to for the truth as to what said proceedings were, and that petitioners be held to strict proof by the record as to the allegations so made.

Respondents further say that it may be true that said Huguley Manufacturing Company was in possession of the factory property mentioned in the petition at the date of the confirmation of the sale, as alleged, but respondents deny that such factory was of the capacity alleged

It is true that one of the purchasers, to-wit: L. Lanier, joined in the organization of the new corporation, known as the Galeton Cotton Mills, but the other two, to-wit: said Kirby and Dallas, did not so join in the organization of said company, and whatever interest they had under the purchase they transferred to the said L. Lanier, and his associates in such new organization.

Respondents deny that the profits of said factory during the time alleged were fifty thousand dollars ($50,000), or any other sum; but on the contrary, they aver that said factory was run at a loss.

Respondents admit that said defendants in said original cause did enter an appeal on the 21st of November, 1892, from the decree of the 30th of May, 1892, and that said cause was heard by the Circuit Court of Appeals for the Fifth Circuit, and that the judgment of the Court below

was reversed, but respondents do not admit that the result of such reversal, as shown by the record, is to set aside the proceedings had in said cause under the facts of the case. Respondents refer to the record for greater certainty as to what proceedings were had therein, and they deny that under the record petitioners are entitled to any relief what ever in the cause.

These respondents, by way of further answer and cross petition, allege that said petitioners are not entitled to any relief, whatever, for the reason that since the rendition of the said decree, the said two corporations named in the petition filed their appeal in said cause, for the purpose of reviewing and reversing said decree, to-wit: on the 28th day of July, 1892. Said appeal was not prosecuted; the same was abandoned and the Clerk of the said Circuit Court, was instructed by the solicitors for the two said corporations not to copy and transmit the record. Before another appeal was instituted the property described in said decree was sold. Said sale was made in all respects in pursuance of the decree therefor, and in the presence of N. J. Hammond and John C. Orrick solicitors for said two corporations, petitioners in this case. Neither of the said solicitors made any objections to the said sale, but on the contrary said Hammond stated to said Lanier, one of these respondents, that the purchaser would get a good title. Said Orrick stated at the time of the sale that there would be no further resistance to decree by said Huguely Manufacturing Company. As soon as the said property was knocked off, said Orrick on said day of sale, cancelled the insurance policies which the Huguely Company had on the property, and notified said Lanier that said Company would have nothing further to do with the property.

The said Lanier communicated said statement of the said Hammond and Orrick to his associates in the purchase of the property, and the said statements were made to him by the said Hammond largely controlled him and them in making and completing the purchase.

Respondents admit that no reference was made to a master, to ascertain the nature and extent of the default of interest of the bonds of Alabama & Georgia Manufacturing Company, and the amount of principal and interest due

on the same, and to whom due, for the reason that it was conceded during the progress of the cause, that if any of the holders of the bonds were entitled to demand a foreclosure by reason of the non-payment of the interest, that the balance of the holders were also entitled to demand a foreclosure, whether interest had been paid on the bonds so held by the balance of the holders or not. That is to say, it was conceded that if one class of bondholders was entitled to a foreclosure the other class of bondholders were likewise entitled. It was not considered desirable that there should be a foreclosure as to a portion of the bonds and no forclosure as to the balance.

There was a portion of the bonds upon which had been paid one half a year's interest more than had been paid on the bonds held by L. Lanier and his associates, who were seeking to foreclose the mortgage. The amount of the bonds upon which had been paid the one half year's interest more than the others, was about ten thousand ($10,000) dollars. These bonds were held in part by D. Janopoula, and others who were unfavorable to a foreclosure of the mortgage, and these bonds were afterwards represented at the time of the confirmation of the sale, and at the time of the distribution of the proceeds, by N. J. Hammond, Attorney of record for said two corporations.

There was no reference to a matter because it was agreed between said Hammond, counsel of record, and counsel for the plaintiff, Robinson, that they would take the testimony in the case and from it and agree who the holders of the bonds were, and the principal and interest due upon the same. It was stated in open court, as respondents are informed, that there would be no necessity for a master, because an agreement had been or would be reached.

All of the bonds were in fact audited as to principal and interest, and an account taken of the names of the holders by A. E. Buck, the commissioner named to make the sale, and after he had made his calculations, respondents are informed that said Hammond went over and verified the figures of said Buck, and found that they were correct. As averred said Hammond controlled, as attorney, all or nearly all of the bonds, not embraced in the

purchase, and he collected from said Buck, the percentage to which each was entitled out of the proceeds of the sale.

D. Jannopoula, the President of the said Huguley Company, controlled or owned some of the said bonds, and he accepted the amount due him on each of the bonds so held—which matter appears on record.

All of this occured before the appeal was entered which resulted in the reversal of the judgment of the court below. Respondents were led to believe from this conduct, so above set out, that the litigation in reference to the foreclosure had fully ended, and that all of the parties intended to acquiesce in the decree entered.

Said Lanier, and Kirby, and Dallas transferred their interest in said property to the Galeton Cotton Mills, corporation duly organized before said appeal was entered. Stock to the amount of twenty thousand ($20,000) dollars was taken in same by persons other than the bondholders interested in the purchase, and the said sum was paid in on said property into the capital stock of the corporation, on the faith of the statement so made to the said Lanier and communicated to them that the title was good, and on the faith that said litigation was fully ended. Said Galeton Cotton Mills is a bona fide purchaser of said property, and is now in the possession of the same, and is entitled to hole, use and enjoy, free from any claim of petitioner's if any they have, which these respondents do not in any wise admit.

Said Kirby and Dallas have now no interest in said corporation, or any of the said purchase. They accepted the per centage coming to them on the bonds held by them out of the proceeds of such sale.

Respondents aver that said appeal was fraudently prosecuted by said two corporations after their solicitors of record had entered an appeal and had abandoned the same, and after its officers and attorneys had stated to these respondents that there would be no further resistance to said decree; and after they had actually aided in the confirmation of the sale and distribution of the proceeds, and receiving the proceeds of the sale in part as herein averred, these respondents say that they are estopped to question validity of said sale, or any proceeding had in the cause.

Respondents further answering say, petitioner's claim to have a judgment for costs growing out of said appeal for the sum of two hundred and fifty ($250.) These respondents aver that it is inequitable, under the facts of the cause, for said petitioners to enforce any judgment for costs against said Robinson, or against the trust property, for the purpose of making the said costs, and they pray that on the hearing of this matter a decree be made perpetually enjoining them from enforcing the same.

Respondents further pray that said sale be decreed to be valid, and that the title of the said factory property be quieted in the Galeton Cotton Mills, and that said petitioners be perpetually enjoined from further proceedings in said case.

And that respondents have such other and further relief as to the court may seem right and preferable.

Respondents refer to the record of said cause for greater certainty as to the contents of the same, and in support of this answer and cross petition.

B. F. ABBOTT,
DORSEY, BREWSTER & HOWELL,
Respondent's Attorneys.

Filing—Filed in clerk's office 4 day of Sept. 1893.
O. C. FULLER, Clerk.

Report of A. E. Buck, Master as to Outstanding Bonds.

J. J. ROBINSON, TRUSTEE, }
vs.
ALA. AND GA. M'F'G. CO. }

Final decree and foreclosure and sale thereunder in the U. S. Circuit Court, Northern District of Georgia.

Report of A. E. BUCK, Commissioner.

J. J. ROBINSON, TRUSTEE, }
vs.
ALA. AND GA. M'F'G. CO. }

Final decree foreclosure and sale thereunder in the U. S. Circuit Court, Northern District of Georgia.

To the Honorable the Circuit Court of the U. S. Northern District of Georgia.

The following statement of A. E. Buck shows that he

acted as Special Master by consent of counsel for parties at interest to ascertain the amount due on each of the outstanding first mortgage bonds and coupons attached thereto, of the said Alabama and Georgia Manufacturing Company and he reports to the court that all of said bonds and outstanding coupons were placed in his hands for purpose of ascertaining amounts due thereon by the persons named in the following statement, which statement contains the numbers, amounts, owners of bonds, and amount due on each for principal and interest to-wit:

L. Lanier,--$15,000.00—coupons and interests 2 1-2 years and 2 1-2 months, $3,250.00,—interest on coupon $302.75, indebtedness $18,552.75—80.43—$14,921.97. (Numbers of bonds, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66.)

L. Lanier,—$8,000.00 coupons and interest 2 1-2 years and 2 1-2 months, $1,733 33, interest on coupon $161.45, indebtedness $9,894.78—80.43—$7,958.37. (Numbers of bonds, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36.)

A. T. Dallas, $5,000.00. Coupons and int. 2 1-2 years and 2 1-2 mos. $1,083.33. Int. on coupon, $110.92. Indebtedness, $6,194.25--80.43--$4,982.03. (Numbers of bonds, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98.)

E. J. Nolan, $3000.00. Coupon and int. 2 1-2 years and 2 1-2 mos. $650.00. Int. on coupons $60.55. Indebtedness $3,710.55—80.43—$2,984.38. (Numbers of bonds 105, 106, 107, 108, 109, 110.)

Hackney, $2,000 and Blackman, $1,000, $3,000.00. Coupons and int. 2 1-2 years and 2 1-2 mos. $650.00. Int. on coupons $60.55. Indebtedness $3,710.55—80.43—$2,984.39. (Numbers of bonds 11, 12, 13, 14, 7, 8.)

L. D. Hutcherson $3,000.00. Coupon and int. 2 1-2 years and 2 1-2 mos. $650.00. Int. on coupons $60 55. Indebtedness $3,710.55--80.43--$2,984.39. (Number of bonds 99, 100, 101, 102, 103, 104).

Julia A. Walker, $2,000.00. Coupons and int. 2 1-2 years and 2 1-2 mos. $433.33. Int. on coupons $40.36. Indebtedness $2,473.69—80.43—$1,989.58. (Numbers of bonds 5, 6, 15, 16).

A. D. Moore, $2,000.00. Coupons and int. 2 1-2

years and 2 1-2 mos. $433.33. Int. on coupons $40.36, $2,473.69—80.43—$1,989.58. (Numbers of bonds 1, 2, 3, 4).

Lou E Kirby, $2,000,00. Coupons and int. 2 1-2 years and 2 1-2 mos. $433.33. Int. on coupons $40.36, $2,473.69—80.43—$1,989.58. (Numbers of bonds 17, 18, 19, 20).

G. A. Huguley, $1,000.00. Coupons and int. 2 years and 2 1-2 mos. $176.66. Int. on coupons $18.20, $1,194.86—80.43—$961.02. (Numbers 9, 10).

Atlanta Nat'l. Bank, $2,000.00. Coupons and int. 2 years and 2 1-2 mos. $353.32. Int on coupons $36.40, $2,389.72—80.43—$1,922.05. (Numbers of bonds 125, 126, 127, 128).

G. A. Huguley $1,500.00. 8 1-2 mos. $85.00, .87 $1,585.87—80.43—$1,275.51. (Numbers of bonds 119, 120, 121).

J. F. Hooper, $1,500.00, 8 1-2 mos. $85.00, .87, $1,585.87—80.43—$1,275.51. (Numbers of bonds 122, 123, 124).

L. Lanier, $1,500.00, 8 1-2 mos. $85.00, .87, $1,585.87, —80.43—$1,275.51. (Numbers of bonds 81, 82, 83).

L. Lanier, $1,500.00. Coupons and int. 8 1-2 mos. $85.00. Int. on coupons 87. Indebtedness $1,585.87—80.43—$1,275.51. (Numbers of bonds 77, 87, 88).

Lula A. Elliot, $1,500.00, 8 1-2 mos. $85.00. .87 $1,585.87—80.43—$1,275.51. (Numbers of bonds 84, 85, 86).

J. E. Elliott, $2,000.00. Indebtedness $2,114.40—80.43—$1,700 68. (Numbers of bonds 76, 79, 78, 80).

Mrs. S. Elliott, $500.00. Indebtedness $528.62—80.43—$425.16. (Number of bond 75).

F. H. Huguley, $2,000.00, 8 1-2 mos. $113.32, $1.16, $2,114.48—80.43—$1,700.67. (Number of bonds 111, 112, 113, 114).

Mrs. S. H. Huguley $6.000.00, 8 1-2 mos. $339.36, $3.48, $6,343.44—80.43—$5,102.02. (Numbers of bonds 67, 68, 69, 70, 71, 72, 73, 74, 115, 116, 117, 118).

L. Lanier, $1,000.00, 8 1-2 mos. $56'66, .58, $1,057.24 —80.43—$850.33. (Numbers of bonds 129, 130).

W. C. & L. Lanier, $80.00, 4 coupons $3.20, $83.20, $80.43, $66.91.

$65,080.00, $11,003.23, $946.67, $76,949.90, $61,-897.50.

Proceeds of sale $66,000 00

To disposition of Proceeds.

To credits entered on bonds & coupons	$61,897 00	
To B. F. Abbott & Co., attorney fees	1,000 00	
To Dorsey, Brewster & Howell..	1,000 00	
To Denson	600 00	
To J. J. Robinson, trustee.....	500 00	
To costs paid clerk of court	230 50	
To advertising Atlanta Constitution	160 00	
To advertising Atlanta Journal..	90 00	
To commissioners taking depositions	120 00	
To commissioners sale fees	400 00	
		$66,000 00

All of said bonds were used by purchasers of the property in part payment of the purchase money except the bonds numbered as follows 67, 68, 69, 70, 71, 72, 73, 74, 115, 116, 117, 118; and which were in hands of Messrs. N. J. & T. A. Hammond, attorneys for Mrs. S. H. Huguley. The foregoing statement is correct as to all recital of facts therein contained. Petitioner has now all of said bonds except 67, 68, 70, 71, 72, 73, 74, 115, 116, 117, 118, which he returned to N. J. & T. A. Hammond after having paid in cash and entered thereon each bond the prorata share due on said bonds. The amount paid on each bond is entered thereon and is the proper prorata share of the proceeds of sale of the property, and he herewith submits the same with this report.

Petitioner prays that this his supplement report be filed and approved and that he be discharged from all further duty and responsibility in said matter.

Respectfully submitted,

A. E. BUCK, Commissioner.

Filing: Filed in Clerk's Office 11 day of March, 1893.

O. C. FULLER, Clerk.

Deed of A. E. Buck, Commissioner, to L. Lanier et als.

United States of America, State of Georgia, Fulton County.

Whereas, in obedience to a decree of the Circuit Court of the United States for the Northern District of Georgia at the suit of J. J. Robinson, trustee vs. The Alabama & Georgia Manufacturing Company et al. which decree dated 30th day of May, 1892, A. E. Buck was appointed to make sale of the property hereinafter described and whereas said A. E. Buck did advertise said property and expose the same for sale at public outcry before the court-house door of Fulton county Georgia on the first Tuesday in September, 1892 within the legal hours of sale when the sale was knocked off to L. Lanier, A. T. Dallas and T. J. Kirby as trustees for all the bondholders of said Alabama & Georgia Manufacturing Company except six (6000) dollars paid by S. N. Huguley and one thousand (1000) dollars by another person, at and for the sum of sixty-six thousand (66,000) dollars, and whereas, said A. E. Buck has made report of said sale to said Circuit Court and the same has been confirmed by decree of said court and said Buck has been directed to make deed to said purchaser Now in compliance with said decree and in consideration of sixty-six thousand (66,000) dollars to him paid by L. Lanier, A. T. Dallas and T. J. Kirby, as trustees as aforesaid the receipt whereof is hereby acknowledged the said A. E. Buck commissioner of said court has this day granted, bargained, sold and conveyed unto said L. Lanier, A. T. Dallas and T. J. Kirby, as trustees all of the estate, title and interest to and of said Alabama & Georgia Manufacturing Company to the following described property. All of a large island in the Chattahoochee river designated as island number six (6) containing one hundred and forty-three (143) acres more or less, also island number (9) containing seven (7) acres more or less, also a small island between island number nine (9) and number six (6) upon which the east end of the factory building rests, containing four (4) acres more or less, all of the three above described islands being in the twentieth (20) District of Harris county, Georgia. Also all that tract or parcel of land lying on the west side of the Chattahoochee river op-

posite the above described islands, bounded on the east by said river, beginning at a point on the west bank of the river nearly opposite the center of the seven acre at a black gum at or near a place known as Sell's corner; thence a straight line to a point where the land owned in 1868 by Mrs. Freeman, Jos. Ross and James Campbell join, known then as Ross and Freeman corner to a pine stake: thence a line to a branch near said stake, and thence a line down said branch to said river and then down the western bank of said river to the beginning point, containing sixty-five and twenty-three one hundredths, (65 23-100) acres more or less lying and being in Chambers county of the state of Alabama and being part of section twenty-eight (28) and twenty-nine (29) township twenty-one (21), range twenty-nine (29), as well as the forty foot (40) right of way from the factory building to the public road leading to the public road leading from the factory building to the public road, leading from West Point, Georgia, to Beula, Alabama, at any point where the factory company may locate it including all tenements and improvements, including the Cotton Mill and all machinery therein or thereto belonging and all water privileges, riparian rights now or hereafter owned and enjoyed by the said Alabama & Georgia Factory. To have and to hold the said property together with all the rights, members and appurtenances unto them the said bargainers and their successors in trust in as full and ample manner as the said Alabama & Georgia Manufacturing Company or any person holding under or through it, might or could have enjoyed the same. In testimony whereof the said A. E. Buck said commissioner hath this day set and affixed his seal this September 16th, 1892.

A. E. BUCK, (Seal) Commissioner.

Signed, sealed and delivered in the presence of O. C. Fuller, U. S. Commissioner for the Northern District of Georgia.

O. E. MITCHELL, N. P. Fulton county, Georgia.
B. N. ABBOTT.

Filed in office for record Oct. 11th, 1892 and was duly recorded Oct. 12th, 1892.

J. J. ROBINSON, Judge of Probate.

STATE OF ALABAMA, Chambers county.

I, Lloyd Robertson, Judge of Probate Court in and for said county in said state hereby certify that the foregoing is a true and correct copy of deed A. E. Buck, Commissioner, to L. Lanier, et als as recorded in Vol. 22 page 458 Record of Deeds.

Given under my hand and seal of office this 9th day of June, 1894.

(Seal.) LLOYD ROBERTSON, Judge of Probate.

Deed of L. Lanier, et als, Trustees of Bondholders to Galeton Cotton Mills.

GEORGIA, TROUP COUNTY.

This indenture made this the 10th day of October 1892 between L. Lanier, A. T. Dallis and Jos. T. Kirby trustees for the bondholders of the Alabama and Georgia Manufacturing Company of the one part, and the Galeton Cotton Mills, a corportion duly established under the laws of Alabama of the other part witnesseth: that whereas under a decree of the Circuit Court of the United States for the Northern District of Georgia in the suit of J. J. Robinson, trustee vs. The Alabama and Georgia M'f'g Co., et als, A. E. Buck was appointed to make sale of the property of the Alabama & Georgia M'f'g Co., and at the sale of said property the first Tuesday in September, 1892 the said L. Lanier, A. T. Dallas, and Jos. T. Kirby became the purchasers of said property as trustees for the holders of the bonds of the said Alabama & Georgia M'f'g Co., and whereas said bondholders have organized a corporation under the laws of the State of Alabama under the name and style of the Galeton Cotton Mills, said bondholders of said Alabama & Georgia M'f'g Co., constituting the stockholders of Galeton Cotton Mills at a meeting regularly called and held at the office of said corporation on the day of Oct., 1892, by unanimous vote all of said bondholders being present or represented, authorized and instructed the said L. Lanier, A. T. Dallas, Jos. T. Kirby, trustees as aforesaid to execute a deed to the aforesaid property to the said Galeton Cotton Mills. Now therefore for in the consideration of dollars to us in hand paid by the said Galeton Cotton Mills the receipt

whereof is hereby acknowledged the said L. Lanier, A. T. Dallas and Jos. T. Kirby, trustees as aforesaid have granted, bargained, sold and conveyed and do by these presents grant, bargain, sell and convey unto the said Galeton Cotton Mills and its assigns the following described property, to-wit:

All of a large island in the Chattahoochee river designated as island No. six (6) containing one hundred and forty-three (143) acres more or less. Also island number nine (9) containing seven (7) acres more or less. Also a small island between islands number nine (9) and number (6) upon which the east end of the factory building rests, containing four (4) acres more or less, all of the above described islands being in the twentieth district of Harris county, Georgia; also all that tract or parcel of land lying on the west side of the Chattahoochee river opposite the above described island bounded on the east by the west west bank of the river nearly opposite the seven (7) acre island at a black gum at or near a place known as Sell's corner; thence a straight line to a point where the lands owned in 1868 by Mrs. Freeman, Job Ross and James Campbell join, known there as the Ross and Freeman corner to a pine stake, thence a line to a branch near said stake, and thence in a line down said branch near said stake, and thence in a line down said branch to said river, and thence down the western bank of the river to the beginning point containing sixty-five and 23-100 (65.23) one hundredths acres more or less lying and being in Chambers county of state of Alabama and being part of section twenty eight (28) and twenty nine (29) township twenty one (21), range twenty nine (29) as well as a forty (40) foot right of way from the factory building to a public road leading from West Point, Georgia to Beula, Alabama at any point where the Factory Company may locate it: including tenements and improvements, including the Cotton Mill and all the machinery therein or thereto belonging and all water privileges and riparian rights owned and enjoyed by the Alabama & Georgia Manufacturing Company. To have and to hold the said property together with all rights, members and appurtenances to the same belonging or in any wise appertaining unto it the said Galeton Cotton

Mills and its assigns in as full and ample manner as the said Ala. & Ga. M'f'g. Co. or any person holding under or through it might or could have enjoyed the same.

In testimony whereof the said L. Lanier, A. T. Dallas and Joseph T. Kirby, Trustees as aforesaid have hereunto set their hand and affixed their seals the day and year first above written.

A. T. DALLAS, L. S.
L. LANIER, L. S.
JOSEPH T. KIRBY, L. S.
Trustees.

Signed, sealed and delivered in presence of witness:
J. C. McKINZIE,
PHIL LANIER,
Notary Public.

Filed in office for record October 11th, 1892, and was duly recorded October 12th, 1892.

J. J. ROBINSON,
Judge of Probate.

Motion of Huguley M'f'g. Co. and order overruling same.

In the Circuit Court of the United States, Northern District of Georgia.

J. J. ROBINSON, TRUSTEE, &c. *vs.* HUGULEY MFG. CO., ET AL. } Motion for restitution by the Huguley Mfg. Company, et al.

Now comes the said Huguley Mfg. Co., and moves the court that it be referred to the Standing Master in Chancery of this court, or such other person as the court may appoint to act as Master, to hear evidence and report to this court the reasonable value of the use and occupation of the property involved in this suit, and of which the bondholders were put in possession under the sale made pursuant to the former decree of this court, which was subsequently reversed on the appeal of the Huguley Manufacturing Co., et al.

Said petitioner further moves the court to direct said Master to take and state said account concurrently with the taking and stating of the account of the mortgage debt and the amount of the bonds upon which the interest has been unpaid as heretofore directed by an order of reference of this cause, made and entered on this day; and that said Master be required to report upon all of said matters concurrently at such time as the court may direct. And petitioners pray that an order for said reference is prayed to be made without requiring, as a condition precedent, that they pay into this court, the sum of money heretofore paid into this court on the purchase of the property as aforesaid.

Petitioners further move the court to vacate and set aside so much of the decree relating to the restitution this day made in the above entitled cause, as requires these petitioners to pay into this court, as a condition precedent to restitution, the sum heretofore paid into this court by L. Lanier, A. T. Dallas and J. T. Kirby upon their purchase of the property under the decree of sale heretofore made in this cause.

These motions are made on the following grounds:

1. That this court can not legally require the payment of said sum as a condition precedent to restitution or the taking of the accounts of rents and profits.

2. That a part of said sum was paid in to be applied to the expenses of the sale under said decree, and that said decree having been reversed, this court cannot legally require these petitioners as a condition precedent to restitution or to said accounting to pay the costs incurred in the matter of said sale.

3. Because a part of said money was applied by the complainants to the purchase of bonds held by D. Jannopoulo and Mrs. Sallie Huguley, and this court cannot legally require petitioners to refund said sum as a condition precedent to restitution, and said petitioners submit on the hearing of these motions the former decree of this court ordering said sum to be paid into this court, (the same being the final decree heretofore rendered and which was reversed) and the petition of said Lanier, Dallas and others as a committee of bondholders setting forth their purchase and praying

confirmation, and the report of A. E. Buck heretofore filed in this cause showing the disposition made of said sum of money by him as commissioner.

Said complainants also move the court to set aside and vacate so much of the decretal order made this day in this cause as requires the payment in court or reimbursement of said sum of money hereinbefore referred to as a condition precedent to the taking by the Master of an account of the rents and profits for the value of the use and occupation of the property involved in this litigation while in the hands of the purchasing bondholders, upon the same grounds hereinbefore noted, and they submit on this motion the same evidence as above set forth in this motion. And petition also submits on the sworn petition for restitution and the answer thereto.

J. M. CHILTON,
BIGBY, REED, BERRY & FOOT,
ALLEN FORTE,
Solicitors for Petitioners.

Order Denying Petition.

The above and foregoing petition is denied on each and all of the grounds as set forth therein.

This September 22d, 1894.

WM. T. NEWMAN, U. S. Judge.

Filing.—Filed in clerk's office Sept. 22, 1894.

O. C. FULLER, Clerk.

Order on motion for restitution, etc.

J. J. ROBINSON, TRUSTEE,
vs.
ALABAMA & GEORGIA MFG. CO. ET AL.

} Petition for Restitution of property by Defendants in in Circuit Court, U. S. N. Dis. Ga.

The matter of framing the proper order of decree under the opinion of this court of file in the matter of restitution, came on to be heard by the court and after argument of counsel thereon on the various aspects of said matter as suggested by counsel, and on consideration thereof it is considered ordered and decreed

1. That the motion of defendants that they have restitution of the property described in the petition and which was sold under the decree of this court as shown by the record, be granted on condition they deposit with the registry of this court within thirty days from this date the sum of ten thousand dollars—the same being the sum paid into the court by L. Lanier, A. T. Dallas and J. T. Kirby the purchasers of said property.

2. The motion of said defendants the Huguley M'f'g Co. et al. to refer the question of mesne profits arising from the use and operation of the property since the sale in connection with the amount to be paid into court as a condition to restitution in order that the one may be offset against the other in court shall appear that mesne profits have accrued is denied.

3. The motion of counsel for complainants, that the condition of restitution shall be that defendants asking restitution should give bond and security that the property on a resale should bring as much as it sold for at the first sale is also denied.

Sept. 22d. 1894. WM. T. NEWMAN, U. S. Judge.

Filing:—Filed in clerk's office Sept. 22, 1894.
O. C. FULLER, Clerk.

Order reference to Julius L. Brown, Esq., Standing Master in Chancery.

In the Circuit Court of the United States, Northern District of Georgia.

J. J. ROBINSON, TRUSTEE, *vs.* ALA. & GA. M'F'G. CO. ET AL. } Bill for foreclosure.

It is ordered by the court that in accordance with the judgment of the Court of Appeals, reversing the decree of this court in said cause, that said cause be referred to the standing master in chancery of this court, Julius L. Brown, Esq., to report to this court forthwith, the amount of principal and interest due on the bonds secured by the trust deed in said cause sought to be foreclosed, and which of said bonds were due under the judgment of the Court of Appeals and the holder of such bonds. The evidence

having been taken in the cause, and is of file in this court, the same is referred to said master, with the right to hear any other and further evidence on that question, necessary to determine the same, if the evidence already taken is not sufficient.

This 22nd, day of September, 1894.

WM. T. NEWMAN, U. S. Judge.

Filing.—Filed in clerk's office 22nd day of September, 1894.

O. C. FULLER, Clerk.
By GEO. S. BARNARD, Deputy Clerk.

Order referring question as to rents, profits to Julius L. Brown, Esq., Standing Master.

In the Circuit Court of the United States, Northern District of Georgia.

J. J. ROBINSON, TRUSTEE,
vs.
ALA. & GA. M'F'G. CO. ET AL. } Bill for foreclosure.

It is hereby ordered that the petition of file in the above stated case, claiming rents, issues and profits, be referred to Julius L. Brown, Esq., standing master in chancery, and that he hear evidence and report upon the same.

This order is not to take effect until petitioners comply with the judgment of the court by reimbursing the purchasers of said property in such amount as the courts may, by its order hereafter determine.

The granting of this order is not a waiver by said petitioners of their right to contest in every way the requirement of the court that they make the reimbursement mentioned above.

This 22nd September, 1894.

WM. T. NEWMAN, U. S. Judge.

Filing—Filed in clerk's office 22nd day of Sept. 1894.

O. C. FULLER, Clerk.
By GEO. S. BARNARD, Deputy Clerk.

Order revoking order referring matters of rents, etc. to Julius L. Brown, Standing Master.

The following order passed this day to-wit:

In the Circuit Court of the United States, Northern District of Georgia.

J. J. ROBINSON, TRUSTEE. *vs.* ALA. & GA. M'F'G. CO. ET AL. } In equity, Bill for foreclosure &c.

It is hereby ordered that the petition on file in the above stated case, claiming rents, issues and profits, be referred to Julius L. Brown, Esq., standing master in chancery, and that he hear evidence and report upon the same.

This order is not to take effect until petitioners comply with the judgment of the court by reimbursing the purchasers of said property in such amount as the court may, by its order hereafter determine.

The granting of this order is not a waiver by said petitioners of their right to contest in every way the requirement of the court that they make the reimbursement mentioned above.

This 22d September, 1894.

WM. T. NEWMAN, U. S. Judge.

Is hereby revoked and set aside, the subject matter being covered by other orders.

This September 22d, 1894.

WM. T. NEWMAN, U. S. Judge.

Filing:—Filed in clerk's office Sept. 22, 1894.

O. C. FULLER, Clerk.

Final Decree.

In the Circuit Court of the United States, Northern District of Georgia.

J. J. ROBINSON, TRUSTEE, *vs.* ALA. & GA. M'F'G. CO. ET AL. } No. 360. In equity. Foreclosure of Mortgage.

This cause came on to be heard at this term of the

court and was urged by counsel, thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows:

1. The court finds, that default was made in the payment of the interest on all the bonds issued by the Alabama and Georgia Manufacturing Co. and to secure with the trust deed sought in this suit to be foreclosed was executed, to-wit: Nos. from 1 to 130 inclusive, which interest became due on July 1st. 1890, and that said default continued for a period longer than six months, and by reason of such default in the payment of said interest for a period longer than six months the principal and interest on each of said bonds become due and payable on and after the first day of January, 1891.

2. The court finds, that after said default had occurred as found above, but before the filing of this suit, the holders of Nos. 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, being forty bonds in number, accepted the interest on the said bonds, and by the accepting of said interest they waived the default, and the principal of said bonds amounting to the aggregate sum of twenty thousand ($20,000) dollars was not due and payable at the date of filing this suit, and that said trust deed cannot be foreclosed for said amount of said forty bonds.

3. The court finds, that interest was not accepted on the bonds, ninety in number, to-wit: Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 129 and 130, and said default is hereinbefore found to have occurred was not waived, and said trust deed can be foreclosed for the amount due on said ninety bonds, the principal due thereon being the sum of forty-five ($45,000) dollars, with accrued interest.

4. The court finds, of those bonds upon which the interest was accepted and the default waived, Nos. 67, 68, 69, 70, 71, 72, 73, 74, 115, 116, 117 and 118 belonged to

Mrs. S. H. Huguley, now Mrs. Kyle, and the amount of the principal is six thousand ($6.000) dollars; and the accrued interest unpaid is coupons 17, 18, 19 and 20, amounting in the aggregate to the sum of five hundred and sixty ($560) dollars; and the interest due on the coupons to November 1st, 1894, is one hundred and six dollars and fifty-six one-hundredths ($106.56), making due as the total amount of said twelve bonds, six thousand six hundred and sixty-six and fifty-six one-hundredths ($6.666.56) dollars at said date. No. 75 belongs to Mrs. S. E. Elliott, and the principal is ($500), and the accrued interest unpaid is coupons Nos. 17, 18, 19 and 20, amounting in the aggregate to the sum of eighty ($80) dollars; and interest due on the coupons is eight and 88-100 ($8.88) dollars; making total amount of said bond five hundred and eighty-eight and 88-100 ($588.88) dollars, Nov. 1st, 1894. Nos. 76, 78, 79 and 80 belong to J. E. Elliott and the aggregate principal is two thousand ($2000) dollars; and the accrued interest is unpaid coupons Nos. 17, 18, 19 and 20 amounting in the aggregate to three hundred and twenty ($320) dollars, the interest due on these coupons is thirty-five and fifty-two hundredths ($35.52) dollars; making a total of said four bonds, principal and interest, November 1, 1894, twenty-three hundred and fifty-five and 52-100 (2355.52) dollars. Nos. 111, 112, 113 and 114 belong to T. H. Huguley, the principal and interest, numbers of coupons, of unpaid interest, and interest on coupons being exactly in amounts corresponding to last four bonds belonging to J. E. Elliott, total being twenty-three hundred and fifty-five and 52–100 dollars. Nos. 125, 126, 127 and 128 belong to the Atlanta National Bank; the aggregate principal is two thousand ($2000) dollars and the accrued interest is unpaid coupons Nos. 14, 15, 16, 17, 18, 19 and 20, amounting in the aggregate to the sum of five hundred and sixty ($560) dollars; interest due on these coupons is ninety-one and 56-100 ($91.56) dollars; making total of said four bonds two thousand and six hundred and fifty-one and 56-100 ($2,65 .56) dollars, Nov. 1, 1894. Nos. 84, 85 and 86 belong to Loula A. Elliott, aggregate principal being fifteen hundred ($1500) dollars; accrued interest unpaid coupons No. 17, 18, 19 and 20, amounting

in the aggregate to the sum of two hundred and forty ($240) dollars; interest on coupons, twenty-six and 64-100 ($26.64) dollars; making total of said three bonds seventeen hundred and sixty-six and 64-100 ($1766.64) dollars, to Nov. 1, 1894. Nos. 119, 120 and 121 belong to G. A. Huguley, and the principal and accrued interest in unpaid coupons, and interest on coupons is identical with numbers belonging to Loula A. Elliott, total being seventeen hundred and sixty-six and 64-100 [$1,766.64] dollars, Nov. 1, 1894. Nos. 122, 123 and 124, belong to T. H. Hooper; principal, interest coupons unpaid, and interest on coupons identical with those belonging to Loula A. Elliott, total being seventeen hundred and sixty-six and 64-100 [1766.64] dollars, November 1, 1894. Nos. 77, 81, 82, 83, 87 and 88 belong to L. Lanier; principal in aggregate three thousand [$3,000] dollars; accrued interest in unpaid coupons Nos. 17, 18, 19 and 20, four hundred and eighty [$480] dollars; interest on coupons fifty-three and 28-100 [$53.28]; making total of six bonds, thirty-five hundred and thirty-three and 28-100 [$3,533.28] dollars, November 1, 1894. Making a total of twenty thousand [$20,000] principal at the date of filing this suit which was not due, and on said bonds since filing this suit has accrued thirty-four hundred and fifty-one and 24-100 [$3,451.24] in unpaid coupons and interest on coupons to November 1, 1894.

5. The court finds that of those bonds on which interest was not accepted and the default was not waived, Nos. 37 to 66 inclusive, belong to Mrs. L. Lanier, guardian of Susie Hnguley; aggregate principal due at date of filing suit fifteen thousand ($15,000) dollars; accrued interest in unpaid coupons Nos. 13 to 30 inclusive, forty-eight hundred (4,800) dollars, interest on coupons to Nov. 1st, 1894, eight hundred and sixty-eight 80-1000 ($868.80) dollars; making total due on said bonds to Nov. 1st, 1894, twenty thousand six hundred and sixty-eight and 80-100 ($20,668.80) dollars. Nos. 21 to 36 inclusive, belong to Mrs. L. Yancy; aggregate principal due date of filing, eight thousand ($8000) dollars, accrued interest in unpaid coupons, Nos. 13 to 20 inclusive, aggregate twenty-five hundred and sixty ($2,560) dollars; interest on coupons to Nov. 1st., 1894, four hundred and sixty-three and

12-100($463.12)dollars;making total due on sixteen bonds eleven thousand and twenty-three and 12–100 ($11,023.12), dollars. Nos. 1, 2, 3 and 4, belong to Mrs. A. D. Moon; Nos. 5, 6, 7 and 8, belong to the heirs of Julia A. Walker; Nos. 11, 12, 13 and 14 belong to Lavinia Hackney; Nos. 17, 18, 19 and 20 belong to Mrs. Lou King. Amount of aggregate principal of each of the above blocks of four bonds is two thousand ($2090) dollars, due at date of filing this suit; accrued interest in unpaid coupons Nos. 13 to 20 inclusive, six hundred and forty ($640) dollars; interest on coupons to Nov. 1st, 1894, one hundred and fifteen and 78–100 ($115.78) dollars, making total on each block of four bonds twenty-seven hundred and fifty-five and 78-100 $2755.78) dollars. Nos. 7 and 8 belong to Joel Walker, Nos. 9 and 10 belong to G. A. Huguley, Nos. 129 and 130 belong to Demetrious Jannopoulo; amount of aggregate principal due on each block of two bonds above is one thousand ($1000) dollars; the accrued interest in unpaid coupons Nos. 13 to 20 inclusive, aggregates three hundred and twenty ($320) dollars; interest on coupons fifty-seven and 92–100 ($57.92) dollars, to Nov. 1st, 1894; making total due on each block of two bonds, Nov. 1, 1894, principal and interest thirteen hundred and seventy-seven and 92–100 ($1377.92) dollars. Nos. 99 to 104, both inclusive, belong to S. D. Hutchinson; Nos. 105 to 110, both inclusive, belong to E. J. Nolan; the amount of the aggregate principal due on each of the last two blocks of six bonds each is three thousand ($3000) dollars; accrued interest in unpaid coupons No. 13 to 20 inclusive, is nine hundred and sixty ($960) dollars; interest on coupons to Nov. 1st, 1894, one hundred and seventy-three and 76-100 ($173.76) dollars, making total on each of said blocks of six bonds Nov. 1st, 1894, principal and interest, forty-one hundred and thirty-three and 76-100 ($4133.76) dollars. Nos. 89 to 98 inclusive, belong to A. T. Dallas; the aggregate principal due on said ten bonds is five thousand ($5000) dollars; accrued interest in unpaid coupons Nos. 13 to 20 inclusive, one thousand ($1,000) dollars; interest on coupons to Nov. 1, 1894, two hundred and eighty-nine and 60-100 ($289.60) dollars. Making a total on said ten bonds principal and interest to Nov. 1st, 1894, $6,889.69-

100 dollars making a total of principal due on the said ninety bonds upon which interest was not paid and accepted and the default waived of forty-five thousand ($45,000) dollars, and total interest due up to November 1st, 1894, seventeen thousand and five and 92-100 ($17,005.92) dollars.

6. And it is further adjudged and decreed, that the plaintiff do recover of and from the said Alabama & Georgia Manufacturing Company the said sum of forty-five thousand ($45,000) dollars principal, and seventeen thousand and five and 92-100 ($17,005.92) dollars for interest up to the 1st day of November, 1894, with all accruing interest on said principal from said date until paid, at 8 per cent. per annum and ..... dollars as cost of this cause, the said sums to be satisfied out of the mortgaged premises hereinafter described, that is to say "All of a large Island in the Chattahoochee river, designated as Island No. 6, containing one hundred and forty-three (143) acres, more or less; also Island No. 9, containing seven (7) acres, more or less; also a small Island between No. 6 and No. 9, upon which the east end of the factory building rests, containing four (4) acres, more or less, all of said three above described Islands being in the 20th district of Harris county, Georgia. Also all that tract or parcel of land lying on the west side of the Chattahoochee river, opposite the above described Islands, bounded on the east by said river beginning at a point on the west bank of said river, nearly opposite the centre of the (7) acre Island, at a black gum, at or near a place known as Sell's Corner; thence in a straight line to a point where the land owned in 1868 by Mrs. Freeman, Job Ross and James Campbell, joins, known as the Ross and Freeman Corner, to a pine stake; thence in a line to a branch near said stake, thence in a line down said branch to said river; thence down the western bank of said river to the beginning point, containing sixty-five and 23-100 (65.23) acres, more or less, lying and being in Chambers county, State of Alabama, being part of section twenty-eight and section twenty-nine (28 and 29) township twenty-one (21), range twenty-nine (29), as well as a forty (40) foot right of way from factory building to the public road leading from West Point,

Georgia, to Berlin, Alabama, at any point where the factory company may locate it, including all tenements and improvements, including the cotton mill and all the machinery therein or thereto belonging, and all water privileges and riparian rights now, or hereafter owned or enjoyed by said Alabama & Georgia Manufacturing Company.

7. It is further ordered and decreed that the remainder of said bonds, to wit forty (40) in number, which are numbers as set out in paragraph 2 of this decree for the aggregate sum of twenty thousand ($20,000) dollars and for the sum of three thousand four hundred and fifty-one and 24-100 ($3,452.24) dollars, interest thereonto November 1, 1894, were not due at the time of the filing of this suit, and said plaintiff as trustee is not entitled to recover therefor.

8. That the equity of redemption in and to said mortgaged premises be and the same is hereby barred and forver foreclosed, so far as the right of said defendant corporation, or any one claiming under or through it is concerned, since the date of the execution of said trust deed or mortgage, to-wit the 2nd day of January, 1884.

9. It is further adjudged and decreed that unless the said defendant shall pay into this court, within 30 days from this date, the said sums of money, to-wit: forty-five thousand (45,000) dollars principal, and seventeen thousand thousand and five and 92-100 ($17,005.92) dollars interest, with all accruing interest at 8 per cent, as in this decree adjudged to be due, together with the cost of this cause, then on failure to so pay in the same Samuel C. Dunlap, Esquire, who is hereby appointed commissioner of this court to advertise and offer the said property for sale, on the following terms and conditions: Said Commissioner will advertise said property once a week for four weeks in the daily Constitution newspaper published in the city of Atlanta and in the Hamilton Journal published in Hamilton, Harris county, Georgia, prior to the offering said property for sale, and on Tuesday, the fourth day of June, 1895, at twelve o'clock, he will offer the same for sale to the highest bidder before the court house door in the town of Hamilton, Harris county, Georgia. Said commissioner will report to this court the name of the highest bidder,

with the amount of his bid, for the confirmation or rejection. He shall require the person bidding off said property, should he be a person other than one representing a majority in amount of the outstanding bonds of said company, to pay into the hands of the commissioner ten thousand ($10,000) dollars, to insure compliance with his bid, in case the sale is confirmed. Any bondholder may bid on said property and in case it shall be bid off by any person for on behalf of the holders of a majority of said bonds in amount, then such purchaser shall not be required to pay into the hands of the commissioner pending his report and confirmation or rejection any more than $5000 to cover costs, fees and expenses of sale.

10. And it is further adjudged and decreed, that in case the holders of said bonds or any of them, purchase said property, they shall be entitled on confirmation to pay the balance of the purchase money in and with the bonds of said company whether the same have matured or not, in the proportion and to the extent that such bonds would be entitled to share in the proceeds of sale if all the purchase money was paid in cash.

11. It is further ordered and decreed, that in case said defendant fails to pay into court the said sums hereby decreed to have matured at the time of the filing of the bill, within the time herein allowed, and in case the property is sold and the proceeds is brought into court for distribution then and in that event the bonds hereby decreed not to have matured at the time of the filing of this bill which bonds are described in paragraph 2 of this decree, are hereby entitled to share in the proceeds of said sale on distribution in amounts according to the findings of the Special Master with all accrueing interest and the holders and owners of said bonds may present them, with coupons attached, for their proper *pro rata* share of said proceeds according to their tenor and effect.

The court being of the opinion that the property decreed to be sold is indivisible and can not be sold to satisfy that portion of the bonds which are hereby decreed to have matured without destroying the value of the property as security for said bonds. And it further appearing that the defendant is insolvent and has ceased to do business; and it further appearing that the said bonds de-

scribed in the second paragraph of this decree have become due since the filing of the bill by reason of the non-payment of interest.

12. The rights of the purchaser of the said property at the sale heretofore made as to amount paid into court are reserved and subject to any other and further decree as to the court may seem meet and proper.

The court also reserves the right to make any other and further decree in reference to the entries of credits on said bonds and the control of the same as shall appear to be proper on final distribution as well as to make any further decree in conformity with the general scope hereof as well as to make any order or decree adjusting the claim of defendants for costs in the Court of Appeal.

13. It is further ordered and decreed, that for any balance of said sums hereby adjudged to be due, which may remain unsatisfied after the sale of said property the said plaintiff may have execution therefore against said defendants.

In open court March 30, 1895.

WM. T. NEWMAN, U. S. Judge.

Filed in clerk's office, 1st day of April, 1895.

O. C. FULLER, Clerk.

By J. D. STEWARD, Deputy.

The Commissioners named in the foregoing decree having failed to advertise the property described in this decree for sale on the first Tuesday in June, 1895 for want of time. It is now ordered and decreed that this decree be amended so that the commissioner Samuel C. Dunlap, Esq., be and he is hereby ordered and directed to offer said property for sale on the first Tuesday in July 1895 after due advertisement as in said decree provided instead of the first Tuesday in June 1895.

In open Court this 27 May 1895.

WM. T. NEWMAN, U. S. Judge.

Petition and order for Appeal.

Circuit Court of the United States, for the Northern District of Georgia.

J. J. ROBINSON, TRUSTEE & PLAINTIFF, } Respondent,
vs.
THE ALA. & GA. M'F'G CO., HUGULEY M'F'G. CO., & WILLIAM T. HUGULEY. } Appellants.

The above named defendants, The Alabama & Georgia M'f'g. Co., Huguley M'f'g. Co., and William T. Huguley, conceiving themselves aggrieved by the order and decree entered on March 30, 1895, in the above entitled proceeding do hereby appeal from said order to the United States Circuit Court of Appeals for the Fifth Circuit, at New Orleans, La., and they pray that this their appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said order and decree were made, duly authenticated, may be sent the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana.

J. M. CHILTON.
W. R. HAMMOND.

Attorneys for defendants and Appellants, the Alabama & Georgia M'f'g. Co., Huguley M'f'g. Co., and William T. Huguley.

Atlanta, Ga., June 8th, 1895.

And now to-wit, on June the 8th, 1895, it is ordered that the appeal be allowed as prayed for.

WM. T. NEWMAN, U. S. Judge.

Acknowledgement of Service.

Due and legal service of the within appeal and of a copy of the same, is hereby acknowledged, and all other and further service and notice waived.

June 8th, 1895.

DORSEY, BREWSTER & HOWELL,
B. F. ABBOTT,
Solicitors for Robinson Trustee.

Filed in Clerk's Office 8th day of June, 1895.

O. C. FULLER, Clerk.

In the Circuit Court of the U. S. for the Northern District of Georgia.

J. J. ROBINSON, TRUSTEE, } Appellee.
vs.
THE ALA. & GA. M'F'G. CO. ET. AL. } Appellants.

The said appellants having prayed an order fixing the amount of a bond which shall operate as a supersedeas of the final decree ordering a sale in this cause. It is ordered, that the amount of said bond be and the same is hereby fixed at the sum of $5,000.

June 8, 1895.

WM. T. NEWMAN, U. S. Judge.

Filed in clerk's office, 8th day of June, 1895.
O. C. FULLER, Clerk.
By J. D. STEWART, Deputy.

Citation on Appeal.

UNITED STATES OF AMERICA, *ss.*

To J. J. Robinson, Trustee, &c.—*Greeting:* You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Fifth Circuit to be holden at New Orleans, in the State of Louisiana, on the 3d Monday in November 1895, pursuant to an appeal, filed in the clerk's office of the United States Circuit Court for the Northern District of Georgia, wherein the Alabama & Georgia Manufacturing Company, Huguley Manufacturing Company and William T. Huguley are appellants, and J. J. Robinson, Trustee, &c., is respondent, to show cause, if any there be, why judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties on that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 8th day of June in the year of our Lord, 1895.

WM. T. NEWMAN, U. S. Judge.

Acknowledgment Service.

Due and legal service of the within and foregoing citation on appeal, and of a copy of the same, is hereby ac-

knowledged, and all other and further service and notice waived this 8th day of June, 1895.

P. H. BREWSTER,
B. F. ABBOTT,
Attys. for Robinson Trustee.

In the Circuit Court of the United States for Northern District of Georgia.

J. J. ROBINSON, TRUSTEE,
vs.
THE ALABAMA & GEORGIA M'F'G. CO., HUGULEY MANUFACTURING CO. AND WM. T. HUGULEY.

Assignment of Errors.

The Alabama & Georgia Manufacturing Company, Huguley Manufacturing Company and William T. Huguley, having prayed and taken an appeal in the above entitled cause now jointly and severally assign the following errors.

1. The Court erred in rendering the said final decree without first having required restitution to be made of the property sold under the first decree which was reversed.

2. The Court erred in not having ascertained, or in not directing to be ascertained, before proceeding to said final decree, the value of the rents and profits of the property which had been sold under the prior decree of foreclosure, which was reversed, said rents and profits being claimed in the petition of the defendants of file in the case.

3. The Court erred in refusing to grant the petition filed by the defendants in said case, praying to be restored to the possession of the mortgaged property, and for an account of the rents and profits thereof.

4. The Court erred in the decretal order of date, September 22nd, 1894, whereby it required the sum of $10,000.00 should be paid into court as a condition precedent to restitution of the mortgaged property, and as condition precedent to an accounting for the rents and profits of said mortgaged property.

5. The Court erred in the decretal order last aforesaid in requiring re-imbursement to be made by the defendants to said purchasers as a part of said $10,000 of the sum of

$5,897.50, paid by said purchasers for the purchase of bonds owned by Mrs. S. H. Huguley and D. Jannopoulo, said bonds not being in default, and the owners of the same declining to join with the other bondholders in the purchase of the property, and no part of said sum of $5,897.50 having been paid into court.

6. The Court erred in decretal order last aforesaid in ruling that as much as $10,000 was paid into court by the purchasers at the day of sale, it being the fact as appears in the record that only $4,102.50 was paid into court, of which last mentioned sum about $3,250 was re-imbursed to said purchasers by assessments made against the bondholders, wherefore it appears said purchasers really paid into court only $857.50.

7. The Court erred in the decretal order last aforesaid in requiring re-imbursement to be made by defendants to said purchasers as a part of said $10,000, the sum of $2,600 fees of solicitors of complainants satisfied out of the $4,102.50 actually paid into court as stated above, the record not showing any liability of defendants for the same, and the court having previously decided that said fees were payable only out of the fund after it had been brought into court, and were not chargably against the defendant, reserving his final decisions as to allowing these fees until these fees had been brought into court.

8. The court erred in the decretal order last aforesaid, in denying the motion of Huguley Manufacturing Company et al., to refer the question of mesne profits arising from the use and operation of the property since the sale in connection with the amount to be paid into court as a condition of restitution, in order that the one might be set off against the other, in case it should appear that mesne profits had so accrued.

9. Said court erred in its decretal order of date October 20, 1894, amending and modifying a decretal order of reference of date September 22d, 1894, said errors being as follows, to-wit:

(1). Said amended order improperly excluded from consideration by the master all evidence going to show that there was at the date of the default in interest alleged in the bill, sufficient money at the office of the Alabama and Georgia Manufacturing Company, at West Point, Ga., to pay such interest, and that such fund was there

for such purpose, and that no demand was there made for same; and that said fund was then and there in the hands of W. H. Huguley & Co. for said purpose.

(2.) The court erred in refusing to direct said master to take evidence and report the fact, nature and extent of any default constituting a breach of the condition of the mortgage which said bill is filed to foreclose. Which said prayer was incorporated in the answer filed October 20, 1894, in response to a rule to show cause why said former order of reference should not be amended.

10. Said final decree of March 30th, 1895, is erroneous in that it is not sustained by the evidence.

11. Said final decree is erroneous in that it finds due and in default a very much larger amount of the principal and interest of the bonds than is disclosed by the master's report $43,000 instead of $45,000 being the proper amount of principal.

12. Said final decree is erroneous in that it adjudges that all the defendants are liable for the debt therein ascertained to be due.

13. Said decree is erroneous in that Huguley Manufacturing Company is or could be made, by the terms of said decree, liable for the debt, secured by said mortgage, or some portion thereof.

14. Said decree is erroneous in that under the evidence the complainant was not entitled to a foreclosure of any of the debts secured by said mortgage, in that no proper demand had ever been made for the payment of said interest.

Said decree is erroneous in that it is disclosed by the evidence that the *cestuis que trust* of the complainant have been in possession of said mortgage property without a valid foreclosure of said mortgage, and if anything was due on said mortgage debt it was due only after an accounting in which said *cestius que trust* should have been charged with rents, incomes and profits, wastes and conversions of said property.

15. Said decree is erroneous in that it is not in conformity to the mandate of the U. S. Circuit Court of Appeals on its decision of this cause on a former appeal.

J. M. CHILTON,
W. R. HAMMOND,
Solicitors for Appellants.

Acknowledgement of Service.

Due and legal service of the within assignment of errors, and of a copy of the same, is hereby acknowledged, and all other and further service and notice waived.

June 8th, 1895.

DORSEY, BREWSTER & HOWELL,
B. F. ABBOTT,
Solicitors for Robinson, Trustee.

Filed in clerk's office, 8th day of June, 1895.
O. C. FULLER, clerk.

MANDATE OF COURT OF APPEALS.

United States of America, ss.:

The President of the United States of America,

To the Honorable the Judges of the Circuit Court of the United States for the Northern District of Georgia—Greeting:

Whereas, lately in the Circuit Court of the United States for the Northern District of Georgia, before you, or some of you, in a cause between J. J. Robinson, Trustee, complainant, and the Alabama and Georgia Manufacturing Company and others, respondents, wherein a final decree was rendered by the said Circuit Court as follows, to wit:

(copied above.)

as by the inspection of the transcript of the record of the said Circuit Court, which was brought into the United States Circuit Court of Appeals for the Fifth Circuit by virtue of an appeal sued out by the said Alabama and Georgia Manufacturing Company and others agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And whereas, in the present term of November, in the year of our Lord one thousand eight hundred and ninety-five, the said cause came on to be heard before said United States Circuit Court of Appeals, on the said transcript of record, and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decree of the

said Circuit Court in this cause be and the same is hereby affirmed.

It is further decreed that the appellants, and the surety on the appeal bond herein, J. B. Redwine, be condemned to pay the costs of this cause in this Court, for which execution may be issued out of said Circuit Court.

January 14th, 1896.

Clerk's costs $33.10. $29.85 paid on account Clerk's costs by W. T. Huguley. Atty's. docket fee $20.00.

You, therefore, are hereby commanded that such proceedings be had in said cause as according to right and justice, and the laws of the United States, ought to be had, the said appeal, notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 25th day of February, in the year of our Lord one thousand eight hundred and ninety-six.

J. M. McKEE,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

Filing: Filed in clerk's office 10th day of March, 1896.
O. C. FULLER, Clerk.

ORDER ENTERING MANDATE.

In Circuit Court of U. S., Nor. Dist. of Ga.

J. J. Robinson, Trustee,
vs. No. 360. In Equity.
Alabama & Georgia Manufacturing Co., et al.

Bill, Etc. Final Decree. Appeal. Mandate of Affirmance.

This cause having been carried by appeal to the Circuit Court of Appeals and the decree of this Court having been affirmed, it is now, on motion of plaintiff,

Ordered that the mandate from said Circuit Court of Appeals be entered on the minutes of this Court in said cause stated, and that in accordance with the judgment of said Court of Appeals the said final decree of this Court stand affirmed.

In open Court March 10th, 1896.
WM. T. NEWMAN, U. S. Judge.

Filing; Filed in clerk's office 10 day of March, 1896.
O. C. FULLER, Clerk.

ORDER DIRECTING SALE.

U. S. Circuit Court, Northern District of Georgia.

J. J. Robinson, Trustee,
vs. No. 360. In Equity.
Alabama & Georgia Mfg. Company, et al.

A sale of the property embraced in the final decree in this case having been prevented by an appeal of the cause to the Circuit Court, said appeal having been disposed of and affirmed:

It is now ordered that Samuel C. Dunlap, Esq., be and he is hereby ordered and directed to offer said property for sale on Tuesday, the 5th day of May, 1896, after due advertisement as in said decree provided and on the terms therein specified.

In open Court, March 10, 1896.

WM. T. NEWMAN, U. S. Judge.

Filing: Filed in clerk's office 10 day of March, 1896.
O. C. FULLER, Clerk.

AMENDMENT TO PETITION OF ALABAMA & GEORGIA MFG. CO., ET AL.

United States Circuit Court, Northern District of Georgia.

J. J. Robinson, et al.,
vs. In Equity. No. 539.
The Alabama & Georgia Manufacturing Co. and William T. Huguley.

To the Honorable, the Circuit Court of the United States for the Northern District of Georgia.

The Alabama & Georgia Manufacturing Company, and the Huguley Manufacturing Company, each a corporation under the laws of the State of Georgia, amend their petition heretofore filed in the above eutitled cause on the 10th day of July, 1893, by leave of the Court first had and obtained, re-affirming the allegations contained in said original petition, and your petitioners further show to the Court, that since the date of the filing of said petition the purchasers of said property have still retained the possession of the same, and still remain in the possession of the

same, and that the sole authority under which they have held and still hold the same is the decree which was reversed and of the sale made thereunder. Your petitioners aver that the rents and profits of said property, ever since it has been in the possession of the present holders of the same have amounted to at least fifty thousand dollars a year, and is far in excess of the amount now due on said mortgage, both of principal and interest.

Your petitioners further aver that the holders of the original bonds of the Huguley Manufacturing Company, under which this foreclosure was had, were the organizers of the present corporation, the Galeton Cotton Mills, except Mrs. Sallie H. Huguley, who was the owner of six thousand dollars of the bonds, and D. Janopoulo, who was the owner of one thousand dollars of the same. All the rest of said bondholders became the purchasers of said property under the reorganization,

Your petitioners, and especially the Huguley Manufacturing Company renew its prayer for an accounting to be taken of said rents and profits of said property of said mill, and that the said purchasers of the same, who were the holders of the bonds as aforesaid, be held to account for the same, and that the Court pass an order for the impounding of the proceeds of the sale of said property, so that the same shall remain under the control of the Court until the question of the value of the said rents and profits shall be determined by the Court, and for such other or further relief as your petitioners may be entitled to in the premises.

PETITIONERS' ATTORNEYS.

United States of America, }
Northern District of Georgia. }

In person came before the undersigned, William T. Huguley, one of the foregoing petitioners, and representing the other two, and says on oath, that the statements contained in the foregoing amended petition are true, of his own knowledge, and he has read over the allegations of fact contained in the original petition to which this is an amendment, and that the facts alleged to be true in said petition are true, of deponent's own knowledge. Deponent has made a very careful estimate of the rents and

profits, and he is prepared to state positively that the estimate of fifty thousand dollars a year is very conservative estimate. Deponent means to state that the rents and profits should be that amount under proper management.

Deponent is abundantly prepared by evidence to substantiate the value of said rents and profits, and to show to the Court that the same should be at least fifty thousand dollars a year.

WM. T. HUGULEY.

Sworn to and subscribed before me, this ninth day of March, 1896. GEO. S. BARNARD,
Deputy Clerk U. S. Dist. Court.

Filing: Filed in Clerk's office 10th day of March, 1896. O. C. FULLER, Clerk.

ORDER OF REFERENCE TO SPECIAL MASTER.

In the Circuit Court of the United States for the Northern District of Georgia.

J. J. Robinson, Trustee,
vs.
Alabama & Georgia Manufacturing Company, et al.

Bill to Foreclose Mortgage.

It is ordered that this case be referred to Thomas B. Felder, Esq., for the purpose of taking an accounting of the proper receipts and disbursements incident to the custody and operation of the mortgaged property, and of the rents and profits earned or that should have been earned since its delivery to the purchasers under the former sale: and to ascertain whether there has been any conversion of the property connected with said property, and the amount and value of the same; as to whether there has been any waste or damage to the property, and as to whether the same is the result of ordinary wear and tear, and as to the liability of the holders of the property therefor.

This March 16th, 1896.

WM. T. NEWMAN, U. S. Judge.

PETITION TO POSTPONE SALE AND MODIFY DECREE.

United States Circuit Court, Northern District of Georgia.

J. J. Robinson, Trustee,

vs. In Equity No. 539,

Alabama and Georgia Manufacturing Company, Huguley Manufacturing Company, and W. T. Huguley.

Petition of Defendants for Rents, Issues and Profits.

Petitioners represent to the Court that since the reference of the above matter to the Special Master, they have used all possible diligence to speed the hearing, and have made considerable progress, but have been unable to conclude the cause. It will undoubtedly take sixty days longer to bring the matter to a final determination and report from the Master. Thirty days more will hardly suffice. It is important that a report be made before the sale of the property, which is to come off, as at present ordered and advertised, on the first Tuesday in the present month, because petitioners claim, and with good reason under the evidence so far adduced, that their demand is more than sufficient to cancel the mortgage indebtedness. They have shown a strong prima facie case to that effect. They have shown by O. B. Tilton, the superintendent of the Exposition Cotton Mills in this City, that he has made a thorough examination of this mill, in minute details, within the last month, and that in his opinion, its earning capacity, in September, 1892, and from then on until the present time, it was at that time in good repair, and everything in first-class condition, should not have been less than one hundred and twenty-five dollars per day, and that there are three hundred and twelve working days in the year. He says the mill has not been kept in repair for three and a half years, and is in miserable condition, and not making more than half what it should make. He made a thorough and complete inventory of all the machinery and buildings, and said no signs whatever appeared of any repairs having been made in three and a half years. He testifies that there has been more than $25,000.00 damage to the property by the water coming in on the machinery, and by its having been badly cared for. He says that if

the mill and machinery, as he saw it, had been in good condition and thorough repair three and a half years ago, with a tight roof, it could have been kept so. and in addition could have earned at least $125.00 per day. He submitted careful estimates based upon close and thorough calculations, showing this would be true. He is a thorough mill expert. He has been in the business for twenty years, and went to this property at the request of Mr. Huguley, and with the permission of the president of the Exposition Cotton Mills, and gave it a very thorough and careful examination.

Petitioners also showed by the testimony of W. T. Huguley, that this mill had been placed in thorough repair, and was so when turned over to the present purchasers and holders. The Huguley Manufacturing Company had been in possession of it for twenty-seven months, and had expended $26,000.00 in repairs and findings, and had placed the mill, machinery and the entire property, in first-class condition, and it was so when it was turned over to the bondholders' committee who afterwards organized as the Galeton Cotton Mills, in September, 1892. He testified that the roof was in good, water-tight condition. His testimony was very full and thorough on these points. He went into the matter in thorough detail. He was on the stand many days, and the majority of the time was consumed in cross-examination. The testimony showed the roof at the present time to be in a wretched condition, and full of great holes all over it, so that the water came down in large quantities, making it necessary that tarpaulin should be stretched over the machinery in order to preserve it at all. This condition of the roof was showed by several of the witnesses, including Tilton and Huguley. The evidence of Tilton shows clearly that the principal damage to the machinery was caused by water and the rust consequent therefrom.

The claim of petitioners has been fully made out by the evidence so far, to the extent of more than one hundred thousand dollars. The mill property has been shown by the evidence to be very valuable. M. B. Torbett, who testified that he was an insurance expert, was introduced and showed that he carried a line of insurance on this property amounting to two hundred thousand dollars, and it was placed by him after a careful survey of the

property and was accepted by the insuarnce experts of the companies he represented, after they had also examined and surveyed the proporty. This insurance was carried by him in the year, 1892.

Your petitioner represents that this valuable property is about to be sacrificed by sale to come off on next Tuesday, under a proceeding in favor of bondholders, who have held possession of it for more than three years and a half, and who are undoubtedly accountable to petitioners for what this property earned, or should have earned, during said period. Petitioners expect to show by other evidence, which they have not yet had an opportunity to bring before the Master, but which they expect to produce on Thursday, the seventh day of May, to which time the hearing has been adjourned, from witnesses living at or near the mill, and who have been thoroughly familiar with its condition all this time, that it was in a first-class condition, in thorough repair in September, 1892, when turned over to the bondholders who were purchasers at the sale.

Premises considered, your petitioners pray that the sale of said property be postponed for at least sixty days in order that the Master can have time to make up his report, and file the same touching the amount of your petitioners' claim as aforesaid.

Yonr petitioners further pray that the Court pass such order, and render such snpplemental decree as may be necessary and proper for the protection of the rights of petitioners in the premises, and that the Court order and direct the impounding of the proceeds of such sale, and that the same shall be held subject to the claim of your petitioners and until the same shall be finally determined by the Court, and that when so determined the same shall be paid to your petitioners out of the proceeds of such sale.

And your petitioners further pray for such further or other relief as they may be entitled to in the premises according to the nature and circumstances of this case. And your petitioners will ever pray, &c.

JOHN M. CHILTON,
BIGBY, REED & BERRY,
ALLEN FORT,
W. R. HAMMOND,
Attorneys for Petitioners.

United States of America,
Northern District of Georgia,
County of Fulton.

In person came before the undersigned, William T. Huguley, who after being duly sworn, deposes and says, that all the facts stated in the foregoing petition are true of deponent's own knowledge. Also came William R. Hammond, of counsel for petitioners, who after being duly sworn, deposes and says, that the facts stated in the foregoing petition so far as they relate to the evidence already taken before the Master are true of deponent's own knowledge, that is the testimony has been taken to the effect as stated therein, and the conclusion stated therein, as to the amount of the recovery that would be fully justified under the evidence already adduced, is correct, in the opinion of deponent. Deponent further says that he has conducted the examination of witnesses under said petition and order of reference before the Master, and has given careful attention to same, and gives the foregoing opinion as the deliberate result of his judgment after hearing said evidence, up to the present time, and he says further that he has used all diligence possible, under the circumstances in which he has been placed, for the speeding of the hearing before the Master. Deponent was compelled by providential cause to leave the city of Atlanta on Saturday at noon for a distant part of the country, and could not return before Wednesday afternoon of the present week, and the preparation of this petition, and the further hearing of evidence during that interval was necessarily prevented, as deponent was the only counsel who had been present during the entire time of the conduct of said case before the Master, and who was in position, for that reason, to properly present this petition before the Court. Deponent further states that in his opinion, the ends of justice can only be met by a postponement of said sale for at least sixty days.

W. T. HUGULEY,
W. R. HAMMOND.

Sworn to and subscribed before me, this May 1st, 1896.

J. A. HYNDS,
Notary Public, Fulton County, Ga.

ORDER.

On considering the foregoing petition, it is ordered that the same be heard before me on the 2nd day of May, 1896, at the hour of 10 in said Court, and that a copy of said petition, and this order be served at once on counsel for complainants in said cause, and respondent in this petition.

WM. T. NEWMAN,
U. S. Judge.

Service: I acknowledge service of a copy of the within petition and order. This 3 P. M., May 1st, 1896.

DORSEY, BREWSTER & HOWELL,
B. F. ABBOTT,
Atty's. for Galeton Cotton Mills, et al.

ORDER DENYING APPLICATION.

It is ordered that this application be denied, without prejudice to the rights of the petitioners to full protection to any and all rights they or either of them may have at any time before the final confirmation of the sale, the Court hereby reserving the right and power to pass such orders in the premises as may be necessary or proper for that purpose.

In open court May 2nd, 1896.

WM. T. NEWMAN, U. S. Judge.

Filing: Filed in Clerk's office 2nd day of May, 1896.

O. C. FULLER, Clerk.
By GEO. S. BARNARD,
Deputy.

COMMISSIONERS' REPORT OF SALE.

Decree from the Circuit Court of the United States for the Northern District of Georgia.

J. J. Robinson, Trustee,
vs. No. 360
Alabama & Georgia Manufacturing Co., et al.

To the Honorable the Circuit Court of the United States for the Northern District of Georgia:

As Commissioner appointed by said Court to sell the

property of the defendant in the above stated case, I beg leave to make the following report:

I advertised the property described in said decree once a week for four weeks in the Daily Constitution, a newspaper published in Atlanta, and in the Hamilton Journal, a newspaper published in Hamilton, in Harris County, Georgia, prior to offering said property for sale. And on the first Tuesday in May, 1896, I sold said property at public outcry before the court house door in the town of Hamilton, in Harris County, in said District, it being the county in which said property is located. When the same was bid off by L. Lanier, representing a majority of the bondholders of said defendant company, at and for the sum of $66,000.00. The said purchaser paid over to me at the time and place of sale the sum of five thousand dollars, as required by the terms of the decree for which he holds my receipt.

The cost for advertising the property in the Atlanta Constitution amounted to $25.00, and in the Hamilton Journal to $21.97, making a total of $46.97. My fee for selling the property by contract is $200.00, making a total expense of $246.97, which amounts I have paid, leaving in my hands subject to the order of Court the balance, to-wit, amount collected from sale $5,000.00, total expense of sale $246.97, amount on hand $4,753.03, amount in hands of purchaser uncollected, $61,000.00

I attach hereto a copy of the advertisement and the bills for advertising same which I have paid.

All of which is respectfully submitted,

May 7th, 1896. SAMUEL C. DUNLAP,
Commissioner.

Filing: Filed in office May 7th, 1896.
O. C. FULLER, Clerk.

PETITION OF PURCHASER FOR CONFIRMATION OF SALE.

United States Circuit Court, Northern District of Georgia.
Final Decree.
J. J. Robinson, Trustee,
vs. No. 360. In Equity.
Alabama & Georgia Manufacturing Co., et al.

To the Judges of said Circuit Court:

The petition of L. Lanier shows that the property de-

scribed in said decree was exposed to sale on the first Tuesday in May, 1896, before the courthouse door in the town of Hamilton, Ga., by Saml. C. Dunlap, Commissioner, appointed for that purpose, after due advertisement in conformity with said decree. That your petitioner for and on behalf of the holders of the bonds of the Alabama & Georgia Manufacturing Company bid off said property at and for the sum of 66,000 dollars. That he paid into the hands of said commissioner on the spot the sum of 5,000 dollars, as in said decree provided for. Petitioner is ready to surrender the bonds of said company in payment of the balance of the purchase money on confirmation of the sale, all of the bonds being legally or equitably the property of the petitioner and his associates and under their control.

Wherefore your petitioner prays that defendants show cause why said sale should not in all respects be confirmed and the Commissioner be directed to make deed to the property. And your petitioner will ever pray, &c.

L. LANIER.

By DORSEY, BREWSTER & HOWELL, and
B. F. ABBOTT, Solicitors.

Order: It is ordered that defendants show cause before me on Saturday, the 30th instant, why the prayer of the foregoing petition should not be granted. Let service on defendants be perfected by serving counsel of record in the case.

This May 27th, 1896.

WM. T. NEWMAN,
U. S. Judge.

Due and legal service of the above and foregoing petition and order acknowledged. Copy waived. This May 27th, 1896.

W. R. HAMMOND.
JOHN M. CHILTON,
ALLEN FORT,
JOHN C. REED,
Solicitors for Defendants.

Filed in Clerk's office 27th day of May, 1896.
O. C. FULLER, Clerk.

ANSWER TO PETITION FOR CONFIRMATION OF SALE.

In United States Circuit Court, Northern District of Georgia.

J. J. Robinson, Trustee, &c.
vs. No. 360. In Equity.
Alabama & Georgia Manufacturing Co., et al.

Answer of the Huguley Manufacturing Co. Petition of L. Lanier, et al., for Order of Confirmation.

In response to the rule to show cause why said sale should not be confirmed, this respondent, for cause why said sale should not be confirmed, shows as follows:

This respondent is the real owner of said property, and the real party in interest as defendant in the foreclosure proceedings. The foreclosure proceedings deprived this respondent of the power to raise the money to pay off the bonded indebtedness, and it has been totally unable to do so ever since the litigation has commenced. Respondent has a good and valid claim against the bondholders, who were the purchasers at the original sale, for the rents and profits of said property, for over three and two-third years, which amounts to one hundred and fifty thousand dollars, or a larger sum.

When the mandate in the Circuit Court of Appeals was filed in the Clerk's office at this Court, this respondent moved at once to have an inquiry made before a Master as to the amount of this respondent's said claim. This Court appointed a Special Master on respondent's said application, to hear evidence on this question and report to this Court the amount of respondent's claim. At the same time this Court ordered a sale of said property on the first Tuesday in May, 1896, under a decree of foreclosure. In the meantime this respondent did all in its power to press to a final hearing and determination the question so referred to the Special Master, but was unable for various causes, and without any fault on the part of respondent, to get the matter finally disposed of before the day of sale had arrived. The respondent had proceeded far enough to make it certain that it was entitled to recover a very large amount of money out of the said petitioners,

who were the purchasers and holders of said property under the former decree. Respondent states to the Court that the evidence already introduced before the Special Master would authorize and require a finding of over thirty-five thousand dollars a year, as the amount that should have been earned by said petitioners out of said property, during the period of time they held it, which was over three and two-third years. Respondent further states to the Court that the evidence already introduced before the Special Master would fully justify recovery of more than twenty-five thousand dollars for damage done to said property on account of repairs and keeping up the same.

Respondent has shown that the roof was tight, and the machinery and property all in good repair, when said property was turned over to said purchasers under the first decree, and that now the roof is full of large holes, and the water pours down over the machinery, so much so that the purchasers have tried to protect it by spreading numerous tarpaulins over it, and that the machinery, and especially the cards, have all been damaged from this and other causes, which could have been prevented by the exercise of ordinary diligence on the part of the petitioners.

These facts have been shown by numerous witnesses, who have been sworn, and testified before the Special Master, and especially by the testimony of O. B. Tilton, superintendent of the Exposition Cotton Mills, of Atlanta, Ga.; Logan Owen, superintendent of the Bibb Manufacturing Co., of Macon, Ga.; John H. Nolan, J. T. Frazier and J. H. Jones.

Respondent here produces to the Court the testimony of these witnesses, certified by the Special Master, showing that this respondent has a very large and substantial claim against said petitioners, and submits on the same, and asks this Court to consider the same in determining the rights of this respondent herein.

Respondent represents to the Court that there was only one bid made at said sale, and the property brought a price far below its real value. Respondent desired to bid at said sale, but was unable to do so because it had no money or property of any kind excepting said property, and was wholly without means to do so. But respondent can and will bid on said property when its said claim

against the said petitioners shall be fixed and determined, because it will then be able to do so, because its claim is very large and substantial one, and this Court will doubtless give it the right to bid on the basis of said claim, and only require it to pay the excess, if any, should it become a successful bidder at said sale.

Said property is worth, at a low estimate, two hundred thousand dollars, as respondent is abundantly able to show, and respondent asks the Court to allow it to offer proof to that effect. It sold for less than one-third that amount.

If the Court will set aside this sale, and allow respondent said claim to be determined before said property shall be sold again, this respondent will purchase said property if it has to pay two hundred thousand dollars for the same. It is a very valuable property, and respondent has a very large and valuable claim against it, and it only asks to be allowed to come into fair competition, in bidding for the property, with the bondholders, who have had possession of the mortgaged property for over three and two-third years.

Respondent respectfully submits to the Court that while its claim is being determined by the Special Master appointed by this Court, and until the amount due to it by the mortgages shall be determined, especially since the cause has progressed far enough to show that respondent's claim is so large and valuable, that there should be no confirmation of the sale that has been made, and that the same should be set aside and respondent's claim ascertained and fixed before the final sale of said property.

Respondent therefore prays that the sale be not confirmed, but be set aside.

If the Court should refuse this prayer, then respondent prays that the sale shall be confirmed only on condition that the said purchasers shall be required to pay into this Court the full purchase price bid by them for said property, or so much thereof as will be sufficient to satisfy respondent's claim as hereinbefore set forth, when the same shall be finally ascertained and adjudicated by this Court, and that the Court incorporate in the decree of confirmation, if it shall confirm said sale, an order or provision to the effect, if the said purchasers should fail to pay into Court such

amount as may hereafter be determined by this Court to be due to respondents under said proceedings now being had before the Special Master, that said sale shall be set aside and said property resold, or such other order, direction and decree be given by this Court in reference to the same, as to justice shall appertain.

J. M. CHILTON,
W. R. HAMMOND,
BIGBY, REED & BERRY,
ALLEN FORT,
Solicitors for Respondent.

UNITED STATES OF AMERICA,
State of Georgia,
Fulton County.

In person came before the undersigned, William T. Huguley, who being sworn, says, that he is the principal stockholder of the Huguley Manufacturing Company, this respondent, owning more than 50 per cent. of said stock, and that the last president of said company, D. Jannopoulo, lives in the State of Missouri, and is inaccessible to respondent, and refuses and fails to co-operate with respondent in the conduct of said cause, having only a very small interest in the same; and deponent says the facts stated in the foregoing answer are true of deponents' own knowledge. W. T. HUGULEY.

Sworn to and subscribed before me this 25th of June, 1896. GEO. S. BARNARD,
Deputy Clerk U. S. Circuit Court.

Filing: Filed in Clerk's office June 25th, 1896.
O. C. FULLER, Clerk.
By GEO. S. BARNARD,
Deputy Clerk.

DECREE CONFIRMING SALE.

In the Circuit Court of the United States for the Northern District of Georgia.

J. J. Robinson, Trustee, &c.,
vs. No, 360. In Equity.
Alabama & Georgia Manufacturing Company et al.

This cause comes on further to be heard on the report of

sale made by Samuel Dunlap, Esq., the Commissioner appointed by the Court to make sale of the property described in the final decrees, and upon the petition of L. Lanier, Trustee, etc., praying a confirmation of said sale, and upon the objections of the Huguley Manufacturing Company, filed to said last named petition and the evidence cited therein. Upon consideration it is ordered, adjudged and decreed:

1. That said objections of the Huguley Manufacturing Company be, and the same are, hereby overruled.

2. It appearing to the Court from the report of said Commissioner, and from the petition of said Lanier, that said property was exposed for sale at the time and place specified in the decree at public outcry, and it further appearing that the provisions and directions of said decree were in all respects complied with, and that the property was knocked down to L. Lanier, Trustee, for the holders of the bonds of the Alabama & Georgia Manufacturing Company, at and for the sum of $66,000.00, that being the highest and best bid therefor.

It is ordered, adjudged and decreed that said sale be, and the same is, hereby confirmed in all respects, and that said Samuel C. Dunlap, as such Commissioner, be and he is hereby authorized and directed to convey to said purchasers named, all and singular the property and the property rights of every description described in said decree, upon the purchasers complying with the terms of said sale.

And it appearing that the amount for principal and interest due on the bonds of said Company is largely in excess of the amount of said bid of $66,000.00, the proper application of credits on said bonds arising from the proceeds of said sale, including cash paid into the hands of said Commissioner, is reserved for further adjudication and direction in the cause.

It is further decreed that all questions of costs, expenses and counsel fees arising in the course of the litigation be likewise reserved for future action and decision of the Court.

3. An order of reference having heretofore been entered in this cause directing Thomas B. Felder, Esq., to ascertain and report to the Court certain claims

for rents, profits, wastes and conversions in respect to the said property, and said investigation now being in progress before said Special Master, it is ordered, adjudged and decreed that should the said accounting finally result in a judgment in favor of the Huguley Manufacturing Company, then such judgment, for any amount thereof in excess of any deficiency due by the defendants to the complainant in the foreclosure proceedings shall, for such excess be, and remain a lien upon said property in favor of the Huguley Manufacturing Company, as against the purchasers at said sale or any persons holding under them.

And the Court retains and reserves the right to seize and order a sale of said property for the purpose of satisfying any such balance so found to be due as hereinbefore set out, and the title shall be made by said Commissioner to the purchaser snbject to this provision.

This June 25th, 1896. WM. T. NEWMAN,
U. S. Judge.

Filing:
Filed in Clerk's office 25th day of June, 1896.
O. C. FULLER, Clerk.

REPORT OF SPECIAL MASTER.

In the Circuit Court of the United States for the Northern District of Georgia.

J. J. Robinson, Trustee.
vs.
Alabama & Georgia Manufacturing Company, et al.

Bill to Foreclose Mortgage.

To the Honorable Wm. T. Newman, United States Judge:

The undersigned, in pursuance of a decretal order of the Circuit Court of the United States for the Northern District of Georgia, pronounced on the 16th day of March, in the year 1896. in a cause in Chancery in the said Court depending between J. J. Robinson Trustee, vs. The Alabama & Georgia Manufacturing Company et al., and the

Huguley Manufacturing Company, intervener, the original order being hereto annexed, having given due notice to the parties concerned, as will appear by the notice herewith returned, proceeded on the 30th day of March, 1896, to execute the said order; and the proceedings having been thenceforward regularly adjourned from time to time, and being at length completed, the result is herewith respectfully submitted.

The undersigned, in taking an accounting of the proper receipts and disbursements incident to the custody and operation of the mortgaged property, and of the rents and profits earned or that should have been earned since its delivery to the purchasers under the former sale; and to ascertain whether there has been any conversion of the property connected with said property, and the amount and value of the same; as to whether there has been any waste or damage to the property, and as to whether the same is the result of ordinary wear and tear, and as to the liability of the holders of the property therefor, found it necessary to have numerous sittings, covering a period of about sixteen months, the argument of counsel alone consuming about a week, and the oral testimony, as written out by the stenographer, making some eighteen hundred pages of closely written matter, and a large amount of books, documents and papers being introduced by the respective parties.

Since the completion of the argument in the cause, the undersigned has devoted about two months to a careful examination of the evidence, both oral and documentary, and consideration of the questions of law involved.

During the progress of the cause, learned counsel on both sides, raised numerous objections to the admissibility of testimony and invoked at the hands of the undersigned numerous rulings, and while the undersigned is persuaded that some errors have been committed by him, he is equally persuaded that these were not upon the controlling issues of the case.

Matters to Be Determined.

Under the said order of reference the matters to be determined by the undersigned are:

(1) Whether there has been any waste or damage to the

property, and whether the same is the result of ordinary wear and tear, and as to the liability of the holders of the property therefor.

(2) Whether there has been any conversion of the property connected with said property, and the amount and value of the same.

(3) The proper receipts and disbursements incident to the custody and operation of the mortgaged property, and of the rents and profits earned or that should have been earned since its delivery to the purchars under the former sale.

The Galeton Cotton Mills, having obtained possession of the property under an erroneous decree of foreclosure, which decree was appealed from and reversed, the main issue between the parties is as to the rule of liability which should be applied under these circumstances. In the opinion of the undersigned, the Galeton Cotton Mills, being a creditor in possession under an erroneous decree of foreclosure, is chargeable only with the profits actually earned, or those which would have been earned but for its own wilful default.

See 78 Ga. 597.
1 Ala. Rep. 496.
Pomeroys Eq. Jurisprudence, Secs. 1216 and 17.
Snells Equity, page 308.
Coot on Mortgages, 18th Law Library, top page 152, marg. 305.
11 Jones on Mortgages, 1123.
26 Gratton, 61.
78 New York, 556.
English Notes to Thornburg vs. Baker, 2nd White & Tudor Leading Cases, part second, 1979, top 1077.

No Wilful Default.

The evidence does not show that the Galeton Cotton Mills has been guilty of any wilful default in the management of the property or in earning profits, but on the contrary shows that the company has made the most that could be made out of the property in the condition it was in when they received it.

Roof.

(1) In regard to the waste and damage alleged to have occurred to the property during its illegal custody by the Galeton Cotton Mills, the movant introduced a large amount of evidence about the failure to repair the roof of the mill building, and tending to show neglect in keeping up the main dam which formed the water power for the operation of the mill; and some evidence tending to show neglect as to specific parts of the machinery used in the mill. In addition to hearing evidence from both sides on these points, the undersigned personally inspected the premises with the consent of all parties. In regard to the roof, the evidence shows that it was somewhat leaky at the time the property went into the possession of the Galeton Cotton Mills. The roof being old and of improper construction, it was hardly practicable to efficiently repair it, but what was really needed was an entirely new roof, which would require the outlay of a considerable sum of money. It cannot well be contended that a creditor in possession under the circumstances shown in this case, is under the duty of making expensive improvement permanent in their nature which would ultimately inure to the benefit of the debtor. The evidence shows further that the Galeton Cotton Mills used the temporary device of protecting the machinery from the water trickling through the roof, by spreading tarpaulins over the machinery, this device having previously been used by the Huguley Manufacturing Company. While the evidence indicates that during the incumbency of the Galeton Cotton Mills the condition of the roof was somewhat worse, it does not show that this interfered with the operation of the mill, or that it damaged the machinery to any special extent, the movant having totally failed to adduce evidence establishing any specific amount of damage from this cause, The undersigned is further of the opinion that the dilapidated condition of the roof resulted from ordinary wear and tear only.

Floor.

Complaint is made by the movant that the Galeton Cotton Mills failed to properly care for the floor of the building, allowing the floor in the main building, which had sagged

in the center, to remain in that condition and the machinery thereby to be out of level, and that the boards forming the floor had been abused and become much worn in places, and that the repairs needed in this respect had not been made. The evidence shows that the sagging of the floors in the main building had occurred some time before the Galeton Cotton Mills took possession, and an effort had been made to level it by jacking it up, but owing to the danger of spreading the walls it had not been brought up quite level, but the machinery itself was levelled up. It is, perhaps, true, that the floor became somewhat more depressed in the center after the Galeton Cotton Mills took possession, but it is not shown that this defect could have been remedied or that the failure to remedy it was wilful neglect on the part of the Galeton Cotton Mills, or that the defect damaged the machinery or interfered with its operation to any appreciable extent. The same may be said of the alleged failure to put in new boards where the old ones had become worn. These things are properly attributable to ordinary wear and tear, and not to negligence or abuse, and the evidence does not furnish any ground for any finding against the Galeton Cotton Mills on on account of any defect in the floors.

Dam.

In regard to alleged neglect in reference to keeping up the dam, the conclusion of the undersigned is that the dam, during the occupancy of the Galeton Cotton Mills, was in about the same condition as it had previously been, and that the Galeton Cotton Mills is not chargeable with any wilful neglect in keeping it up or repairing it. If there was any depreciation in the efficiency of the dam it was small and attributable to ordinary wear and tear.

Machinery.

The movant claimed that the Galeton Cotton Mills had been guilty of improper care with respect to the machinery, and that among other things, certain of the machines had been robbed of their parts to supply missing or defective parts on other machines. The evidence on this point, as well as the others, was conflicting, but the undersigned is

of the opinion that the practice of taking parts from some of the older machinery to supply parts on other machines had commenced before the Galeton Cotton Mills went into possesion, and further, that the machines thus deprived of their parts were old and practically worn out and incapable of being operated at a profit. Indeed all the machinery in the mill was shown to have declined in value and its utility and productive power greatly reduced by reason of its advanced age. A number of witnesses were examined as to the average life of cotton machinery, and while their estimates varied, it is safe to say that such machinery cannot be profitably operated, even when properly kept up and repaired, for more than fifteen or twenty years at the outside. This mill was constructed about the year 1869, and some of the machinery put in at that time is still there and in operation. Some of the older machinery has been displaced by reason of having ceased to be capable of running at a profit. As to about forty-five or fifty looms which had once been in in operation, it was claimed by the movant that they had been dismantled and put off in the basement of the mill, when the same should have been continued in operation; but the evidence on this point shows that these looms were taken out and replaced by new looms before the Galeton Cotton Mills took possession. There is no machinery in the mill of very recent date, the latest having been purchased in 1881 or 1882. In a word, the buildings, dams and machinery in this mill are all old, and like everything else material, have been unable to resist the empire of decay. Hence the undersigned says, that there has been no waste or damage to the property beyond ordinary wear and tear resulting from its use, covering a period of almost a quarter of a century.

Conversion of Property.

2. The next question is "whether there has been any conversion of the property connected with said property, and the amount and value of the same." This, no doubt, refers to the claim made by the movant that certain movable property went into the possession of the Galeton Cotton Mills, and was used or converted by it, which property was not included in the decree of foreclosure, or the sale, but belonged to the movant. The evidence shows that

there was in the office and in the mill a quantity of supplies and findings belonging to the Huguley Manufacturing Company, which were there for the purpose of being used as needed in the operation of the mill, but which had never been called into requisition. There is no dispute that these supplies and findings were used up by the Galeton Cotton Mills in its operation of the mill during the period of accounting. Their value is shown to be $2,500.00, and the movant is entitled to a finding for this amount, together with interest thereon from the date of said conversion, September 6th, 1892, at the rate of seven per cent. per annum, which amounts to $891.04.

The evidence does not show that any other property belonging to the Huguley Manufacturing Company was converted to the use of the respondent.

Receipts and Disbursements.

Interest on $16,600.

(3) In regard to the proper receipts and disbursements incident to the custody and operation of the mortgaged property, and of the rents and profits earned or that should have been earned since its delivery to the purchasers under the former sale, the evidence discloses that in the fiscal operation of the mill, interest was charged on the sum of $16,600.00, and that this charge was purely arbitrary; the owners of the Galeton Cotton Mills simply assuming that the same was worth the sum of $65,000.00. being the price bid at the sale of the property, plus $16,600.00. The interest thus charged is unauthorized, and the respondent is properly chargeable therewith. The total interest on this sum (not counting any compounding) is $4.773.42, with interest from April 30th, 1896, to date at the rate of 7 per cent. per annum, which amounts to $481.72, which sums undersigned allows in favor of the intervener.

Interest on Bonded Debt.

The evidence also discloses that respondent charged from time to time as a part of the expense incurred in the operation of the mill interest on the mortgage debt amounting in the aggregate to $17,812.00. This charge is mani-

festly improper, because the movant was being charged and liable for interest at the contract rate on the bonded debt which was erroneously foreclosed on the property. To allow the charge of interest on the bonded debt made by the Galeton Cotton Mills, at the same time that the movant is held liable for interest on its bonded debt would be to require the movant to pay double interest, which would be unjust and illegal. Therefore, the movant is entitled to a finding in its favor on this ground for the amount of $17,812.00 with interest from April 30th, to date, at the rate of 7 per cent. per annum, which amounts to $1797.48.

Sundry Charges.

It appears from the testimony in the case that divers charges were made by the Galeton Cotton Mills on account of attorneys' fees, etc., as follows, to-wit:

Fees and expenses of Abbott, Attorney	$554	65
L. M. Harris	2	00
Recording deed	5	25
Charter	10	00
Fees of Clerk of the Court of Appeals	20	75
Lanier's expenses to New Orleans	29	65
Smith, stenographer	20	00
Legal fees as per account	25	00
J. W. Brown, expenses to mill	12	05
Robinson & Dukes, attorneys	50	00
Making in the aggregate the sum of	$729	35
And int. charged on same to Apr. 30th, '96	131	04
	$860	39

In the opinion of the undersigned these are not the proper charges and movant is entitled to a finding in its favor on this ground, for the said sum of $860.39 principal, and interest from April 30th, 1896, to this date, at the rate of 7 per cent. per annum, which amounts to $86.77. See schedule.

Expenses of Directors.

It further appears from the evidence in the case that the expenses of the directors of the Galeton Cotton Mills, traveling from Boston to West Point, amounting in the aggregate to $732.85, was charged to the expense account. It is the opinion of the undersigned that so much of said account as was incurred by the treasurer in traveling to and from the mill, which amounted to $336.42, was a proper charge, but that the remainder, to-wit: $366.43, was not a proper charge and therefore movant is entitled to a finding on this score for the said sum of $366.43 principal, and the further sum of $24.62 interest charged on above sum to April 30th, 1896, making $391.05, and 7 per cent. interest thereon from April 30th, 1895, to date, which amounts to $39.49.

Waste.

One of the contentions of the movant is that in this accounting, respondent has failed to account for the total amount of waste produced by the mill during the period of time that they operated the same. The evidence discloses that the whole amount of the waste produced during the period in question was 532,282 pounds. Of this respondent accounted for 212,695, leaving unaccounted for 319,587. This at two cents per pound would make the sum of $6,391.74, which, in the opinion of the undersigned, justifies the finding in favor of movant and against respondent for said sum of $6,391.74. Interest is allowed on this sum at the rate of seven per cent. per annum from the 30th day of July, 1894, to date, this calculation being based on the average time the mill was operated by defendant; the amount of interest allowed being $1461.58.

Insurance.

It appears that respondent kept the buildings, etc., insured, loss, if any, payable to the Galeton Cotton Mills, for the sum of $75,000 at the rate of one per cent. per annum. If the buildings had been consumed by fire the proceeds thereof would not have inured in anywise to the benefit of the mortgagors. There seems to have been no contract wherein the Galeton Cotton Mills was authorized

to take out this insurance and charge the cost of it to the movant. This being true, it is the opinion of the undersigned that respondent had no right to charge to operating expenses insurance premium, and I therefore find in favor of the movant against respondent on this ground, the sum of $3502.52 principal, and interest from the 30th day of April, 1896, at the rate of 7 per cent. per annum, making $353.45.

See 2nd Jones on Mortgages, Section 1135.

Interest on Working Capital.

When the respondent went into the possession of the mill it had no working capital, although a working capital was required. The amount so required was variously estimated by the witnesses; some placing it at $20,000, some at $25,000 and some at $30,000, and upwards. One of the witnesses stated that ten dollars per day interest on this account, being not only amply sufficient, but in his opinion excessive, respondent charged to operating expenses as interest on working capital for the period of time said mill was operated, $17,195.24.

The undersigned has caused to be made an abstract of the treasurer's account and interest calculated thereon, which shows that the interest on the amount of capital actually employed, amounts to $14,021.47. The difference between this sum and the sum charged is $3,174.77, and this amount the undersigned finds in favor of movant, besides interest at the rate of 7 per cent. per annum from the 30th day of April, 1896, which amounts to $320.41.

Interest on Datings.

Movant contended, with much earnestness and some plausibility, that N. Boynton & Co., the sales agents of the Galeton Cotton Mills, in their course of dealing with the purchasers of the product of said mill pursued a plan known in commercial parlance as "datings," whereby goods were sold and delivered and the bills made to bear a date in the future, and that the mill was charged with interest on these datings exceeding the usual cash discount of 2 per cent, which amount of interest so charged against this mill amounted all together to $11,108.35. The undersigned is free to confess that in dealing with this phase

of the case he was much perplexed. There was evidence to the effect that it was customary in this business to allow the interest on such datings in addition to the cash discount, whenever a purchaser availed himself of the privilege of paying cash, instead of taking advantage of the dating. Thus it will be seen that the selling agents did not receive the interest on these datings, but that it was a benefit, by way of additional discount, accorded to purchasers as an inducement to prompt settlement of their accounts. Indeed, the custom of the trade being to allow such interest, in addition to the cash discount, it became a part of the contract of sale so as to entitle the purchaser to the customary allowance of interest. Thus it would not be optional with the sales agents to grant or refuse interest discount after the dating had been allowed. And it was no doubt necessary to allow datings in order to effect sales in the face of competition. Probably it was also to the interest of the Mill, not only in the way of meeting competition, but also in the advantage of making immediate delivery on future orders, thus saving storage and insurance on goods. In other words, the account sales rendered by N. Boynton & Company, containing these interest charges correctly represents the actual amounts realized by them for the mills from sales of goods, and in the absence of any evidence of wilful default in not realizing more on such sales, the Galeton Cotton Mills cannot be charged with more than the amounts actually realized. There was some evidence to the effect that some of the datings were unusually long and that the interest allowed on datings was too high, but there was not enough of this evidence to show that these charges were improper under the rule which has been stated as determining the liability of the respondents to account to the movant. Therefore, the conclusion of the undersigned is, that the charges for interest on datings contained in the account sales by N. Boynton & Company are proper.

Commissions to Selling Agents.

It is further contended, on behalf of the movant, that as N. Boynton & Company were financially interested in the Galeton Cotton Mills, they had no right to handle the products of the mill and charge agents commissions for their

services. It was also claimed that their charges were excessive. In the opinion of the undersigned, it is not illegal for persons interested in the profit of a mill to act as selling agents and receive commissions for handling the product of the mill. As a general thing, supposing the agents to be honest, it would be better to have one who was interested in the business, as he would be more likely to attend to it properly and diligently. The evidence does not show that N. Boynton & Company have made improper or excessive charges by way of commissions on sales.

As regards the contention that the commissions charged were excessive, a careful examination of the evidence adduced on this point convinces the undersigned that the commissions charged for handling the products of the mill were not excessive, especially in view of the fact that N. Boynton & Company guaranteed the payment by their customers of all sums due, thereby entailing no loss upon the mill because of bad debts.

This being so, it is proper that the Galeton Cotton Mills in accounting to the movant should be allowed credit for the sums paid to N. Boynton & Company as commissions on sales, and the same is hereby allowed.

Alleged Shortage on Cotton.

It was further claimed by the movant that a large amount of cotton which should have been accounted for was not accounted for. It was sought to show this by a comparison of the total amount of cotton bought for the mill with the amount which the books show had been opened for the purpose of being manufactured. The evidence shows, however, that the Galeton Cotton mills at times sold some of the cotton on hand, which presumably was not needed at the time and that the proceeds of these sales have been credited on the treasurer's accounts. While this claim does not seem to have been insisted on, it is enough to say that the evidence does not authorize any finding against the Galeton Cotton Mills for any such shortage.

Goods Unsold.

It was further claimed by the movant that the item of goods on hand unsold, which appears as a charge against

the Galeton Cotton Mills, was not as large as it should be, but that the value of these goods on hand was underestimated. The evidence does not support this contention, but the conclusion of the undersigned is, that the valuation of $33,737.28 put on these goods covers their market value at the time.

Charges for Cotton.

It is also insisted by movant, that the charges for cotton purchased for the Galeton Cotton Mills were higher than the ruling market prices at the dates of purchase, and that the movant is entitled to a credit for the difference between the price paid for cotton and the price for which it could have been procured. On this point some of the witnesses testified that the Galeton Cotton Mills always paid the market prices. The cotton for this mill was purchased by W. C. & L. Lanier, who also did the buying for several other mills during the same period of time. Mr. Lanier testified that the cotton was charged to the Galeton Cotton Mills at the same prices as to the other mills, the same being the actual cost price of the cotton. He admitted that in a few occasional instances cotton was furnished to the mill "to be priced," but this was not the custom, and it was done in such comparatively few instances and comparatively small purchases that is does not appear that the mills sustained loss thereby to any appreciable degree. To support the alleged overcharge on cotton, the widest latitude was allowed movant in the introduction of testimony and a number of witness were examined as to the average market prices of various grades of cotton in Atlanta, LaGrange, Newman and West Point. In addition to this, the cotton books of several large firms in West Point, who dealt in cotton, were introduced. It does not appear from this mass of testimony that the Galeton Cotton Mills have paid more for their cotton than it could have been produced for at the time it was bought. The movant undertakes to establish such an inference by a comparison of the prices paid with certain average prices of cotton for specified months. It would seem that the proper way to show such overcharges, if they existed, would be to show the date and amount of each purchase

and the market price of cotton in West Point on those days. On the whole, the undersigned is of opinion that the claim of overcharge on cotton purchased by the Galeton Cotton Mills is not made out by the evidence, and therefore said claim is disallowed.

Prices of Goods Sold.

It was further claimed by the movant, that the products of the mill were sold at inadequate prices. This mill was engaged in the manufacture of cotton ducks, known as 7 oz., 8 oz., and 10 oz. duck respectively. The movant introduced a number of witnesses who testified to the average prices of these classes of goods, and seeks to show, by a comparison of the average prices testified to by these witnesses with the average prices realized by the Galeton Cotton Mills, that the prices realized were far below what they should have been. It would seem that in impeaching the account of sales rendered by the respondent, the movant ought to show that the goods at the time they were sold brought less than the market price of the same grade goods at the time and place of sale, and that the failure to realize the best price obtainable was by the wilful default of the respondent. Neither of these propositions is shown by the evidence. While the evidence for the movant, in the shape in which it is presented, may suggest an inference that the goods sold for the account of the Galeton Cotton Mills ought to have brought better prices, still the evidence strongly indicates that the product of this mill was not equal in quality to those goods to which the market price applies. Furthermore, so long as the selling agents acted in good faith, and sold the products of the mill at fair prices, not necessarily the best prices, the movant would have no cause to complain. The undersigned is of opinion, that the selling agents of this mill realized a good price for its products, and perhaps as good prices as could have been gotten under the circumstances, and therefore the finding must be against the claim of the movant that the prices realized for the goods produced by the mill were grossly insufficient.

Indeed, in regard to the claim of over-valuation of cotton bought, and under-valuation of goods sold, the undersigned thinks that the movant must stand by the actual

results until he can show that those results are materially different from what they should have been, and that they were brought about intentionally or by negligence so gross as to amount to wilful default.

Stoppage of Mill.

It is also suggested in behalf of the movant, that he is entitled to a finding for the amount of profit which would have been earned by operating the mill during a period of thirty days, estimated to have been lost by reason of broken pinions to the water wheels, and other causes. This claim is disallowed, because the undersigned is of the opinion that accidents happen in the best regulated mills, and are more liable to occur and cause stoppage in machinery that is old and worn than in a new mill. Indeed, the respondent seems to have done as well as could have been expected with the machinery and equipment at its command.

Stoppage of Certain Machinery.

Complaint is also made of a loss of product by reason of the failure to keep the full complement of machinery in operation during the whole of the period of accounting. On this point the evidence is that some of the machinery, or what had been machinery, which went into the possession of the Galeton Cotton Mills, was not fit for use, but that all of it which could be run at a profit and perhaps some that could not, was employed constantly for the purpose of getting out the full product of the mill, except that occasionally a spinning frame or some other piece of machinery would be stopped for repairs, a thing which the evidence shows happens in all mills, and with greater frequency in mills that use old and run-down machinery. Therefore this claim is disallowed.

Rulings.

During the progress of the investigation, a number of rulings were invoked on the admissibility of testimony, but it is not considered material or profitable to notice in detail

all of these rulings. Doubtless some errors were committed, but none that would affect the result or make it different from what it is. To go into a discussion of all the details in the testimony and rulings of the Court, would needlessly lengthen this report without any compensating advantage.

Books and Vouchers.

It was shown to the satisfaction of the undersigned, that the books introduced by the respondent, to-wit, a journal and ledger, purporting to be the books of the original entry of the Galeton Cotton Mills, were not such, but the same appeared to be copies. Yet all the original vouchers, from which, no doubt, the original books of entry were made up, were brought into the Court and tendered along with the said books. These vouchers were submitted to the inspection of the adverse party as well as to the Court.

In dealing with these lengthy and complex accounts, the undersigned has undertaken to pass on all of the disputed items and clearly set forth the results of the evidence on these items. There are a great many items submitted in the accounts of the respondent about which no controversy arose, and for that reason no mention is made of them.

Summary.

The Galeton Cotton mills show by their accounts, that during the three and two-third years over which the accounting extends the net result of their operation of the mill is a loss of $4654.60. To overcome this, however, there are items here found in favor of movant largely in excess of said sum. The following statement shows, in opinion of the undersigned, the true state of the accounts, to-wit:

		Interest from April 30th, '96 to date 7 per cent.
Interest Charged on $16,600	$4,773.42	481.72
Coupons on Mortgage Bonds....	17,812.00	1,797.48
Insurance	3,502.52	353.45
Excess Interest on Balances.....	3,174.77	320.41
Directors' Expenses (schedule)..	366.43	
Interest Charged on Same to Apr. 30, 1896	24.62	39.49
Sundry Expenses (Schedule)....	729.35	
Interest Charged on Same to Apr. 30, 1896.....	131.04	86.77
	30,514.15	3,079.32
Deduct Loss as Shown by Books, April 30th, 1896	4,654.60	469.72
	25,859.55	2,609.60
Interest from April 30, 1896	2,609.60	
	28,469.15	28,469.15
Property converted Sept. 6, 1892.	2,500.00	
Interest to Oct. 9, 1897, at 7 per cent	891.04	3,391.04
Waste not Accounted for, 319,587 lbs. at 2c.....	6,391.74	
Interest from Jnly 3, 1894 (Average Date) to Oct. 9, '97 at 7 per cent.....	1,461.58	7,853.32
Total Award, with Interest at 7 per cent. to Oct. 9, '97.....		$39,713.51

And the said sum of $39,713.51 is awarded in favor of movant against the Galeton Cotton Mills.

Conclusion.

The undersigned does not understand the order of reference as requiring him to make the application of the

credit found in favor of the movant to the balance of the debt owing by the movant, which was left after the movant was credited with the price which the property brought at the last sale. Probably the parties will be able to agree as to the proper application of these credits on the decree, and in the event of their failing to do so, the same will be readily fixed by the Court.

In conclusion, the undersigned desires to say that in dealing with the voluminous and complicated matters of account, he found it necessary to invoke the aid of an impartial and disinterested expert accountant. The services of Mr. A. L. Waldo were secured, and the abstract of the treasurer's accounts prepared by him and verified by me is herewith submitted as a part of this report.

As a matter of simple justice to the accountant, it affords the undersigned pleasure in stating that the work was performed with great skill, unusual accuracy and marked ability.

Respectfully submitted,

THOS. B. FELDER, Jr., Special Master.

This October 9th, 1897.

Filing: Filed in Clerk's office, Nov. 2, 1897.

O. C. FULLER, Clerk.

EXCEPTIONS BY RESPONDENT TO REPORT OF MASTER.

In the Circuit Court of the United States for the Northern District of Georgia.

J. J. Robinson, Trustee,

vs.

Alabama & Georgia Manufacturing Company, et al.

Petition for Accounting.

And now come the Galeton Cotton Mills and J. J. Robinson, Trustee, and except to the report of the special master in the above stated cause, and for ground of exception thereto, say:

First: Respondents say that the master erred as a mat-

ter of law in holding and deciding that respondents were not entitled to charge to operating expenses of the mill during the term by the above reference the money paid for premiums on fire insurance policies, to-wit, the sum of 3502.52-100 dollars.

The undisputed evidence before the master shows that said sums were duly paid on fire insurance premiums, and respondents say that the master erred in finding and deciding that said sum of 3502.52-100 dollars principal, and 343.45-100 dollars interest on said principal were a valid charge in favor of the movants against said respondents.

Respondents say that the master should have found the said sum of 3502.52-100 dollars, together with..... dollars interest on the same as a valid and subsisting charge in favor of the respondents, as a part of the operating expenses of said mill during the time covered by said reference, and the failure to so find is error.

Second: Respondents say that the master erred as a matter of fact in finding, holding and deciding that movants were entitled to recover against respondents for 319,587 pounds of waste, at 2 cents a pound, making the sum of 6391.74-100 dollars, with interest thereon, to-wit, 1461.58-100 dollars to October 9th, 1897.

Movants aver that the evidence shows that respondents accounted for all of the waste which came into his hands during the time covered by said reference:

(a) The account sales of the selling agents of the Galeton Cotton Mills, N. Boynton & Co., in Boston, show that they sold 212,695 pounds of waste, as found by the master.

(b) The evidence in case as shown by fortnightly reports of the Galeton Cotton Mills show sales of bagging which do not appear on the statement of sales by said sales agents, amounting to 1651.04-100 dollars, which at 2 cts. per pound would amount to 82,552 pounds.

(c) The evidence shows that there were purchased 1,006 bales of cotton during the time covered by the said reference. Respondents say that on each of said bales there were six pounds of ties, which ties were used in baling manufactured goods, and the total weight of said ties is 66,000 pounds.

(d) The evidence shows that waste consists in part of sand, dust and moats, which are utterly worthless, and respondents allege that fully three per cent. of the weight of the cotton bought consisted of such sand, dust, moats and refuse stuff, which waste, in that respect alone, amounts to 150,000 pounds.

(e) The evidence shows that there is loss in weight on cotton on the 11,006 bales of cotton purchased, according to average loss on cotton bought and used for such purposes, amounting to 55,000 pounds.

Respondents allege that the master erred in holding and deciding that respondents had failed to account for 319,587 pounds of waste and in holding and deciding that the same was worth two cents a pound, and that it amounted to 6391.74-100 dollars, and that the interest thereon to October 9th, 1897, was and is 1461.58-100 dollars, and in deciding that said sums were a proper charge against respondents, and in not holding and deciding that respondent, the Galeton Cotton Mills had fully accounted for all the waste which came into its hands.

And movants say that the master erred in so finding and reporting said sums as a valid charge against respondents.

Third: Respondents say that the master erred as matter of fact in holding and deciding that movants were entitled to recover against this respondent, the Galeton Cotton Mills, for the property converted since September 6th, 1892, the sum of 2500 dollars, with interest thereon to October 9th, 1897, in the sum of 891.04-100.

Respondent says that the evidence fails to disclose what said property was and that its value was of the sum so found. And respondents aver that the master erred in so finding, and in not reporting in favor of respondents on said issue.

DORSEY, BREWSTER & HOWELL,
B. F. ABBOTT, Sol. for Respondents.

Exceptions overruled. This Nov. 2nd, 1897.

THOS. B. FELDER, Jr., Special Master.

Filing: Filed in Clerk's office Nov. 2, 1897.

O. C. FULLER, Clerk.

EXCEPTIONS OF INTERVENERS TO REPORT OF MASTER.

In the Circuit Court of the United States for the Northern District of Georgia.

J. J. Robinson, Trustee,
vs. In Equity.
Alabama & Georgia Manufacturing Company, et al.

Exceptions by Intervener to Report of Special Master, Hon. Thomas B. Felder, Jr.

And now comes the intervener, the Huguley Manufacturing Company, having received notice from the Special Master, the Hon. T. B. Felder, of his report in said cause, and before the filing of said report, and excepts to the same and for cause of exception says that the special master erred:

1. In holding and ruling that the Galeton Cotton Mills, during the time of its occupancy and possession of the property in dispute, was only chargeable with the profits actually earned, or which would have been earned but for its wilful default.

The contention on the part of intervener was and is, that the true rule of liability was, that the Galeton Cotton Mills was liable to intervener for such profits as would have been earned by the exercise of ordinary and reasonable diligence by the Galeton Cotton Mills.

2. In holding and ruling that the Galeton Cotton Mills, under the evidence introduced in the cause, was only liable for the profits actually earned by it, as shown by the evidence introduced on its own behalf; whereas, if the proper rule of diligence had been applied to the question of its liability, and the amount of same, under the evidence in the cause, the finding of the special master would have been a much larger amount than it was, to-wit: in addition to the sum of $39,713.51, already allowed, the further sum of $171,215.27, or a total sum of $210,928.78 would have been the finding of the master.

3. In holding and finding that the evidence shows that the Galeton Cotton Mills made the most that could have been made out of the property in the condition it was in when they received it.

4. In holding and finding that the amount of interest charged by the officers and agents of the Galeton Cotton Mills against the corporation, under the general charge of "Balance interest on account," being $17,196.24, should only be reduced to $14,021.47, and allowing the last named sum to stand as a charge against the Galeton Cotton Mills, in favor of their agent and treasurer, Horace S. Sears, and thus operate as charge against intervener in the accounting between it and the Galeton Cotton Mills; intervener claiming and contending that no evidence was furnished to the master on which he could allow the same, and that the only interest charged which could properly [be] allowed, was "interest on working capital," which the evidence showed would not exceed $30,000.00 principal, and that interest on this sum, at 7 per cent. per annum would only be $7,700.00, for the period of accounting. Intervener contends that an additional amount should have been allowed in its favor against the Galeton Cotton Mills, on this account of $6,321.47.

5. In holding and finding that the charges for interest on "Datings," contained in the account of sales rendered by N. Boynton & Company to the Galeton Cotton Mills, to the amount, to-wit, of $14,108.35, was a proper charge in favor of the Galeton Cotton Mills against the intervener.

Intervener contends that this amount so charged should not have been allowed, nor any part of it, and that the whole amount of it should have been added to the amount found in favor of intervener against the Galeton Cotton Mills.

6. In holding and finding that there was no excess of "commissions," charged by N. Boynton & Company, the sales agents of the Galeton Cotton Mills, on account of sales of duck and other product of the mills, said charge having been five (5 per cent.) on the gross sales, or $30,626.19 in the aggregate; whereas, intervener contends that no more than three and one-half (3½) per cent. should have been allowed as a credit to the Galeton Cotton Mills on account of such sales, or the gross sum of $21,438.33, which should make an additional amount of $9,187.86, which would have been found by the special master in favor of intervener against the Galeton Cotton Mills.

7. In holding and finding that no amount should be allowed to the intervener against the Galeton Cotton Mills on account of "shortage on cotton," or the difference in the amount of cotton bought and paid for by the Galeton Cotton Mills, and the amonnt actually opened and consumed by the mills, as shown by their own books, said amount being as follows:

	Pounds.
Actual pounds of cotton bought and paid for	5,408,341
Actual pounds of cotton opened and consumed	5,283.028
Difference unaccounted for	125,313

Intervener contends that there was no evidence showing that this cotton was accounted for and that the special master should have found in its favor against said Galeton Cotton Mills the value of the same, at 8¼ cents per lb., or $10,338.32, in the aggregate.

8. In holding and finding that the valuation of $33,737.28, credited by the Galeton Cotton Mills for goods on hand at the end of the period of accounting, was a correct valuation, and that no additional charge should be made against the Galeton Cotton Mills in favor of intervener on this account. Intervener claims and contends that the evidence shows clearly that the market value of the stock on hand at the end of the period of accounting was as follows:

273,050 lbs. duck on hand Apl. 30, 1896:	
Of which, in Boston, 117,832 lbs., 12½ cts.	$14,729.00
Of which, in West Point, 155,218 lbs., 12½ cts	19,402.25
Frt. prepaid to Boston on former lot	707.00
Additional value on converted goods	850.00
Goods at mill, unbaled, 1,691 lbs., at 12½ cts.	211.37
Cotton at mill, in process, 10,000 lbs., 12½ cts	1,250.00
Other stock, waste, &c, 24,207 lbs., 2 cts.	484.14
Total net value as per testimony	$37,633.76
Deduct valuation as per defendant's estimate	33,737.28
Leaving a balance on this account of	$ 3,896.48

which should have been charged in favor of intervener against the Galeton Cotton Mills in addition to the amount allowed of $33,737.28.

9. Intervener claims and contends that the special master erred in refusing and failing to find the amount of $3000.00, with interest, in favor of intervener against his defendant, which was shown by the evidence to be the value of the "belting" on hand at the close of the period of accounting, which belting, was shown by the evidence, to have been converted to its own use by the Galeton Cotton Mills; and further in failing and refusing to find in favor of the intervener and against the Galeton Cotton Mills, the sum of $658.25, with interest, being the value of the supplies and findings admitted by the defendants to have been on hand at the close of the period of accounting, as shown by the evidence.

10. In holding and finding that no amount should be allowed in favor of the intervener against the Galeton Cotton Mills on account of "overcharge on cotton," bought and charged against the Galeton Cotton Mills by W. C. & L. Lanier. Intervener claims and contends that the prices paid for cotton by the Galeton Cotton Mills were largely in excess of the market prices of cotton in West Point, as shown by the evidence; and this excess, for the period of accounting, amounted to the sum of $50,359.52, which amount should have been found in favor of intervener against the Galeton Cotton Mills. Under this head intervener makes the following specific claims:

(a) The overcharge on 610,507 lbs. of cotton, from January 9 to May 4, 1893, was one and four-tenths cents per pound, making $8,547.09, which have been found in favor of intervener and against the Galeton Cotton Mills; (b) The overcharge on 219,085 lbs. of cotton, purchased during the month of June, 1893, was 1.476 cents per lb., or $3,233.69; which should have been found in favor of intervener and against the Galeton Cotton Mills, etc.

Intervener does not confine its claim to these two specifications, but claims and contends that the evidence shows an overcharge for the whole period of accounting, as shown by the difference in the market prices of cotton, and the prices at which it was charged against the Galeton Cotton Mills, of $50,359.52, as stated above.

10. (a) In holding and finding that the intervener should have shown to the master the amount and date of each purchase made by the Galeton Cotton Mills, and the market prices of cotton on those days, when it was a matter entirely and exclusively within the knowledge of the Galeton Cotton Mills and its officers and agents to show the amount and date of each of these purchases, and when intervener had shown the dates when they were charged, and had shown, by abundant evidence, the market price on those days.

Intervener claims and contends that it was not incumbent on it to show the dates and amounts of cotton bought by the agents of the Galeton Cotton Mills for the mills, but that this duty rested upon the defendants, and that no proof having been offered by the defendant to show the dates and amounts of each of those purchases, the master should have taken the market prices at the dates when the cotton was charged on the cotton books of the Galeton Cotton Mills, and which were in evidence and charge the difference between these prices and the market prices against the defendant, in favor of intervenor, amounting to the said sum of $50,359.52.

11. In holding and finding that there was no liability on the part of the Galeton Cotton Mills to the intervener on account of its failure to sell the duck, manufactured by the mill, at the full market price of the same.

Intervener claims and contends that the product of the Galeton Cotton Mills was as good, or should have been as good, as the product of other competing mills, concerning which evidence was introduced before the master; and that the evidence shows, and the master should have found, that as much should have been realized per yard or per pound from the sale of the product of the Galeton Cotton Mills, as was realized, as shown by the evidence, for the product of the competing mills; or, in other words, the market prices for the ducks should have been realized, and that this was not done.

Intervener claims and contends that the evidence shows that the number of yards of the product sold, and the amount realized on same, as appearing on the account sales rendered by N. Boynton & Co., summarized, were as follows:

(a) For 7 oz. and less than 8 oz. 1,944,638 yards, were returned at $127,497.76; whereas, intervener claims and contends there should have been realized and returned according to the evidence, the sum of $145,445.98, showing a deficit of $17,951.22.

(b) For 8 oz. and less than 9 oz., aggregating 4,510,-140 yards, there is returned on account sales $286,195.04; whereas, intervener claims and contends, according to the evidence, there should have been realized and returned the sum of $389,495.51, showing a deficit of $53,300.47.

(c) For 9 oz. and less than 11 oz., aggregating 2,245,-301 yards, there is returned as per account sales, $197,-731.71; whereas, intervener claims and contends, under the evidence, there should have been realized and returned $221,11.225, showing a deficit of $25,389.54.

In other words, to sum up, for the 8,700.079 yards of product, so reported and sold, and returned, as per account sales, at $611,424.51, intervener claims and contends, under the evidence, that the Galeton Cotton Mills, or the agents representing same, should have realized and returned the sum of $708,065.74; thus showing a deficit or undervaluation, to be accounted for, of the sum of $96,641.23.

Intervener claims and contends that there should have been a finding in favor of intervener against the Galeton Cotton Mills for this between the amount returned by N. Boynton & Co. and the true value of the same, as shown by the evidence, to-wit: the sum of $96,641.23.

The foregoing does not include the $3,896.48, deficit in valuation as to the stock on hand unsold, as already shown, the two together aggregating, as the amount of total deficit and undervaluation, the sum of $100,537.71.

12. Intervener claims and contends that the special master erred in this: Counsel for intervener, when they were first offered, objected to the admission in evidence of the books of the Galeton Cotton Mills, to-wit: the Journal and Ledger, on the grounds that they had not been shown to be the original books, or books of original entry of the mills, and intervener offered evidence that they were too fresh to have been original books, and had no check marks upon them, such as books of original entry, in daily use, commonly have. The books were, at

first, ruled in by the master. Afterwards, counsel for intervener offered further evidence, and showed that the "water marks" on the paper, of which the books were made, showed the date of "1894," whereas the entries on the books purported to have commenced in 1892, and intervener renewed its motion to exclude the books on the introduction of this new evidence. The master then stated that he would exclude the books from evidence. But, nevertheless, the master, in making up his report, has used and relied upon these books, and has had them audited, in part, by A. L. Waldo, the expert accountant, employed by him, and has based his report upon the contents of these books.

Intervener claims and contends that these books should not have been used or considered by the master at all, in making up his report, but that the report should have been made up from the other evidence that was before the master, excluding from consideration entirely these books.

13. Intervener claims and contends that the special master erred in admitting, over the objection of counsel for intervener, the testimony of L. Lanier, that the Galeton Cotton Mills, during the period of its operation, from September 6th, 1892, to May, 1896, made a net loss of $4,654.60: the objection to said testimony being that it was the result of a calculation, made by a person or persons other than the witness, from the books of the mill, and that the books were the best evidence of their contents, and of any loss or profit made or sustained by the mills. The books having been excluded by the master, as evidence, this testimony, showing the result of a calculation or estimate of profit and loss, as based upon receipts and expenditures, as shown by these books, should have been excluded from evidence and should not have been used by the master in making up his report, as correctly showing the result of the operation of the mills for the period of accounting.

Counsel for intervener claim and contend that this was a fundamental error that vitiates the entire finding of the special master, and that he should be directed by the Court to reconsider the evidence and submit a new report in the case, excluding entirely from consideration the books which were excluded by him.

Attention is called to the fact that on page 37 of his re-

port where he makes summary of the account, the master gives a credit to the Galeton Cotton Mills of this amount, in these words: "Deduct loss as shown by the books, April 30th, 1896, $4654.60."

14. Intervener claims and contends that the special master erred in admitting and using, as original evidence, the accounts of sales made by N. Boynton & Co. to the Galeton Cotton Mills, and in using the same as being a correct report of sales made by N. Boynton & Company of the product of the mills, the testimony not having been sufficient, as intervener contends, to show that these account sales were correct, or that they showed correctly the receipts and disbursements made by N. Boynton & Co., on account of the sale of the product of the mills during the period of accounting.

Counsel for intervener did not object to these accounts of sale going in evidence, as showing, in connection with the testimony of L. Lanier, the amounts of money actually paid by N. Boynton & Co. to the Galeton Cotton Mills, but did object to their being used by the master, as correctly showing the amounts actually received for the mill products by N. Boynton & Co., there having been no sufficient nor independent evidence, as counsel for intervener contends, that they correctly represented the actual and proper receipts and disbursements on that account.

15. The master erred in not allowing to the intervener a large sum to-wit: $25,000.00, for injury to the mill machinery during the period covered by this investigation. The evidence shows that the machinery, by not being kept in repair, and by reason of exposure to the weather, consequent upon the failure to repair the roof of the main bnilding, was seriously damaged, to wit: in the sum above stated.

Nov. 1, 1897.

J. M. CHILTON,
ALLEN FORT,
W. R. HAMMOND,
BIGBY, REED & BERRY,
Counsel for Intervener.

The above and foregoing exceptions overruled.
This Nov. 2d, 1897. THOS. B. FELDER. JR.,
Special Master.

Filing: Filed in Clerk's office Nov. 2d, 1897.
O. C. FULLER, Clerk.

In the Circuit Court of the United States, for the Northern District of Georgia.

The Huguley Manufacturing Company, and William T. Huguley, Movants,
vs. Equity.
The Galeton Cotton Mills, et al., Respondents.

INTERVENTION OF THE HUGULEY MANUFACTURING COMPANY FOR ACCOUNTING FOR RENTS, ISSUES AND PROFITS.

The greater part of the previous history of this case can be found in the opinions of the Court in Robinson, trustee, vs. The Hugley Mfg. Co., et al., 51 F. 268, 56 F. 690, 67 F. 189, 72nd F. 708.

After the last decision of the Appellate Court as reported in 72nd F. 708 supra, the property was sold under the last decree and bought by the same purchasers as at the former sale. Subsequently the following order was made:

"It is ordered that this case be referred to Thomas B. Felder, Esq., for the purpose of taking an accounting of the proper receipts and disbursements incident to the custody and operation of the mortgaged property, and of the rents and profits earned or that should have been earned since its delivery to the purchasers under the former sale; and to ascertain whether there has been any conversion of the property, connected with said property, and the amount and value of the same; as to whether there has been any waste or damage to the property, and as to whether the same is the result of ordinary wear and tear, and as to the liability of the holders of the property therefor."
"This March 16, 1896."

The report of the special master was filed October 9, 1897, so that the hearing before the special master occupied something like 18 months. Of course the hearing was at intervals as suited the convenience of counsel and

the special master, and as the necessity for getting witnesses and testimony required.

The special master having filed his report, exceptions were made by both sides, and it is on these exceptions that the present hearing is had. The special master reported against the purchasers of the property $30,713.51, which was awarded in favor of the movants against the Galeton Cotton Mills. The exceptions need not at all be noticed in detail, as they can be embraced under a few general heads which, it is believed, will cover the entire subject matter of the report and the exceptions.

Counsel for the movants claim that the special master evidently misunderstood the order of the Court and put an incorrect construction thereon in that he was required to "take an account of the proper receipts and disbursements incident to the custody and operation of the mortgaged property, and of the rents and profits earned or that should have been earned since its delivery to the purchasers under the former sale." They contend that the effect of the order of the Court was to determine in advance that the correct rule to be observed by the master was to ascertain what the property by good management should have earned, as well as what it really did earn, during the period in question. My own construction of this order would be that its meaning was that the special master should ascertain the proper receipts and disbursements incident to the operation of the property, if he should find that it had been operated or what it should have earned in the event it had not been operated.

The special master, in his report states the following to be the rule which he adopted in ascertaining the amount for which the holders of the property should be held liable:

"The Galeton Cotton Mills, having obtained possession of the property under an erroneous decree of foreclosure, which decree was appealed from and reversed, the main issue between the parties is as to the rule of liability which should be applied under these circumstances. In the opinion of the undersigned, The Galeton Cotton Mills, being a creditor in possession under an erroneous decree of foreclosure, is chargeable only with the profits actually earned, or those which would have been earned but for its own wilful default." Citing in support

of the foregoing 78 Ga. 597, Ala. Repts. V. 1, 496, Pomeroy's Eq., Secs. 1216–17, Snell's Eq., 308, Coot or Mortgages, 18th L. L. 152, 2 Jones on Mortgages, 1223, 26 Cratton, 61, 78 N. Y., 556, English Notes, 2 Thornburg vs. Baker, 2 White and Tudor Leading Cases, Part 2, 1979 to 1077.

The special master then proceeds to say that "the evidence does not show that the Galeton Cotton Mills has been guilty of any wilful default in the management of the property or in earning profits, but on the contrary shows that the company has made the most that could be made out of the property in the condition it was in when they received it." In other words, the conclusion of the special master seems to have been that the Galeton Cotton Mills were only liable to account for such profits as they made while operating the mills in good faith and with reasonable care and prudence. The converse of this proposition is that the company operating the mills would have been liable for such amounts as they ought to have made, if the evidence had shown that in bad faith they had operated the mills so as to produce less than they would have produced by ordinarily careful and prudent management. This seems to state the correct rule on the subject.

The purchasing committee for the bondholders from whom the Galeton Cotton Mills obtained the property, purchased the same in good faith under a decree regularly entered in this Court and at a time when there had only been no appeal from the decree but when an appeal which had been commenced had been abandoned by the then counsel for the defendants in the case. They must have come into possession of the property in good faith believing in their title. It was rather a close question as to whether or not the defendants were entitled to restitution at all after the reversal of the first decree by the Appellate Court, but restitution was ordered after a careful investigation on certain conditions which were not complied with, and which the Appellate Court approved. The fact that the Appellate Court also entertained some doubt as to whether or not it was a case where restitution should be ordered. I think may be fairly gathered from a clause in the last opinion of that Court, in which this language

occurs: "We are, therefore, relieved from inquiring into and deciding whether the case was one calling for restitution, as the appellants insisted that it was. The Court held that it was and the other parties have not appealed."

The question is settled now, however, and is referred to only to show the extent of the good faith holding of the purchasers when they entered into possession of this property and organized the Galeton Cotton Mills, and to support the conclusion just stated that they would certainly be held to no stricter rule than to an account for what they actually earned in the operation of the property while acting in good faith with ordinary and reasonable care and diligence.

The determination of this question goes very far towards a determination of all the contentions in the case. The master having found, after a long and tedious examination of all the books, papers and accounts, and after having heard the testimony of all the parties at interest that there *was no wilful default or bad faith on the* part of the Galeton Cotton Mills in the management and control of this property, it would require of course a clear case of error to justify the Court in interfering with the conclusion reached by him. No such error is apparent. On the contrary, an examination of the record in this case tends to support the conclusion of the master. It seems reasonably clear that the mill was operated in the ordinary and usual way, and also, that instead of the facts and circumstances showing any bad faith or wilful failure to earn profits, they show the reverse.

In reference to the profits arising from the operation of the mill, the two principal matters in regard to which it is claimed by the movants that the special master erred, are as to the purchase of the cotton used in the mill and the prices paid for it, on the one hand; and the sale of goods manufactured at the mill and the prices received for the same on the other hand.

It appears from the evidence in the case that the cotton for this mill and for two other mills was purchased by W. C. and L. Lanier, of West Point, Ga., near where the property in question was located. It is claimed that the cotton furnished the mill by W. C. and L. Lanier was charged to them at a higher price than cotton ruled in the

market at the dates that the different lots of cotton were delivered. The argument in favor of this contention is mostly based on a statement of averages as to the ruling price of cotton at different dates while the mill was being operated, compared with the price of the cotton delivered to the mills. The claim for the movants seems to be that L. Lanier of the firm of W. C. and L. Lanier, the firm purchasing the cotton, was the principal owner of the property in question and largely interested in this controversy, and that the cotton was so manipulated as to charge it to this mill at a higher price than was just or proper and for more than it cost or was worth in the market. The special master went into an exhaustive examination of this question; he heard a large amount of evidence and had at his command all the data that could be desired for reaching a correct conclusion on the subject. He found against the movants in this question. The part of his report referring to the same is as follows:

"It is also insisted by movant that the charges for cotton purchased by the Galeton Cotton Mills were higher than the ruling market prices at the dates of purchase, and that the movant is entitled to a credit for the difference between the price paid for cotton and the price for which it could have been procured. On this point some of the witnesses testified that the Galeton Cotton Mill always paid the market prices. The cotton for this mill was purchased by W. C. and L. Lanier who also did the buying for several other mills during the same period of time. Mr. Lanier testified that the cotton was charged to the Galeton Cotton Mill at the same prices as to the other mills, the same being the actual cost price of the cotton. He admitted that in a few occasional instances cotton was furnished to the mill "to be priced," but this was not the custom, and it was done in such comparatively few instances and comparatively small purchases that it does not appear that the mills sustained loss thereby to any appreciable degree. To support the alleged overcharge on cotton, the widest latitude was allowed movant in the introduction of testimony, and a number of witnesses were examined as to the average market prices of various grades of cotton in Atlanta, LaGrange, Newman and West Point. In addition to this, the cotton books of several

large firms in West Point, who dealt in cotton, were introduced. It does not appear from this mass of testimony that the Galeton Cotton Mills have paid more for their cotton than it could have been procured for at the time it was bought. The movant undertakes to establish such an inference by a comparison of the prices of cotton for specified months. It would seem that the proper way to show such overcharges, if they existed, would be to show the date and amount of each purchase and the market prices of cotton in West Point on those days. On the whole, the undersigned is of opinion that the claim of overcharge on cotton purchased by the Galeton Cotton Mills is not made out by the evidence, and therefore, said claim is allowed."

I have been furnished by the movants with some data and calculations on this subject, of the purchase of cotton, and after carefully examining it in connection with the whole case, I am satisfied that here is no just reason for interfering with the conclusion of the special master on this point.

In reference to the claim that goods were sold for less than the market price, the special master reports, as follows:

"It was further claimed by the movant, that the products of the mill was sold at inadequate prices. This mill was engaged in the manufacture of cotton ducks, known as 7 oz., and 10 oz. duck, respectively. The movant introduced a number of witnesses who testified to the average prices of these classes of goods, and seeks to show, by a comparison of the average prices testified to by these witnesses with the average prices realized by the Galeton Cotton Mills, that the prices realized were far below what they should have been. It would seem that in impeaching the account of sales rendered by the respondent, the movant ought out to show that the goods at the time they were sold brought less than the market price of the same grade of goods at the time and place of sale, and that failure to realize the best price obtainable was by the wilful default of the respondent. Neither of these propositions is shown by the evidence. While the evidence for the movant, in the shape in which it is presented, may suggest an inference that the goods sold for the account

of the Galeton Cotton Mills ought to have brought better prices, still the evidence strongly indicates that the product of this mill was not equally in quality to those goods to which the market prices applies. Furthermore, so long as the selling agents acted in good faith, and sold the products of the mill at fair prices, not necessarily the best prices, the movant would have no cause to complain. The undersigned is of the opinion, that the selling agents of this mill realized a good price for its products, and perhaps as good prices as could have been gotten under the circumstances, and, therefore, the finding must be against the claim of the movant that the prices realized for the goods produced by the mill were grossly insufficient."

"Indeed, in regard to the claim of over-valuation of cotton bought and under-valuation of goods sold, the undersigned thinks that the movant must stand by the actual results until he can show that those results are materially different from what they should have been; and that they were brought about intentionally or by negligence so gross as to amount to wilful default."

I am unable to find any error in this part of the special master's report. He had the evidence of these sale all before him and seems to have examined quite a number of witnesses as to the actual price of goods of the same kind and qualities, and concluded "that the selling agents of this mill realized good prices for its products and perhaps as good prices as could have been gotten under the circumstances." And this is justified by the facts. Counsel for the movants were informed during the argument, that the Court was throughly satisfied, on this branch of the case, with the master's report; but it has been argued in the briefs submitted since and though careful consideration has been given the argument thus submitted, I find no reason to change the conclusion reached, on the hearing, that the master's report on this branch of the case was, at least, fully justified by the evidence, if indeed, the evidence did not require it.

In this connection there was considerable discussion on the argument of the case, and there has been since in the briefs of counsel, as to certain books which were offered in evidence by the purchasers of this property. The books were first admitted in evidence and afterwards

it turned out from water marks that they were made after the date of certain entries. For this reason the master ruled them out and stated he would only use them, in his examination of the case, so far as they were supported by other evidence, vouchers, &c. It is not shown anywhere, so far as I have seen in the evidence, that these books contain incorrect entries nor that anything entered on them was fraudlently entered in order to mislead and deceive. It would seem from what appears in the record, that the master only used these books, so far as they were useful, in finding other data to use in his investigation of these accounts. I am wholly unable to see any harm that was done the movant by such use of these books. If the master verified all the entries on the books before he made any use of them, that was certainly as much as could be asked and this he seems to have done.

The special master in his report, says: "It was shown to the satisfaction of the undersigned that the books introduced by the respondent, to-wit: the journal and ledger, purporting to be the books of original entry of the Galeton Cotton Mills were not such, but the same appeared to be copied. Yet all the original vouchers from which, no doubt, the original books of entry were made up, were brought into Court and tendered along with the said books. These vouchers were submitted to the inspection of the adverse party as well as to the Court."

It is also insisted that the master failed to comply with the 79th Equity Rule, which requires all parties accounting before a master to bring in their respective accounts in the form of debtor and creditors, etc. The master seems not only to have complied with this rule, but to have gone beyond it. He not only had a statement of the account brought in by L. Lanier, whom the movants seem to treat as their real antagonist in the case, but he had all the books, vouchers, cotton tickets, account sales, etc., before him. Counsel for the movants referred to this mass of evidence as "bushels of papers," and perhaps this is not an exaggeration. These papers were shown to the Court in baskets at the hearing, and it was stated and not denied that the fullest liberty of examination of the whole matter was given to the master and to counsel on the hearing.

This covers the main contentions for the movants in the case as argued by them on the argument and in the briefs since filed, and disposes of the case so far as it is necessary to discuss the same.

There are three principal grounds of exceptions on the part of the Galeton Cotton Mills to the report of the master. The first relates to the conversion by the purchasers of this property of certain supplies and findings, which, it is claimed, did not pass by the sale and which belonged to the Huguely Manufacturing Co. There is some difficulty as to the item but I am unable to find satisfactory reasons for interfering with the special master's conclusions. There is doubt as to its correctness as matter of fact, but it is only a doubt. I have concluded, therefore, to let this ite n stand.

The next ground of exception claimed by the purchasers is as to the waste. I was impressed on the argument with the contention for the purchasers that the master had misconceived the evidence on this subject, but an examination of the record shows that there was evidence to justify this finding. Indeed, if the master had followed one of the witnesses in the case he would have found a somewhat larger amount than he did against the purchasers of this head. The ruling of the master upon this subject will not be disturbed.

The next exception for the purchasers is as to the refusal of the master to allow the Galeton Cotton Mills the amount paid out by them for insurance on the property. The finding of the master as to this item is as follows:

"It appears that respondent kept the buildings, etc., insured, loss if any, payable to the Galeton Cotton Mills, for the sum of $75,000.00, at the rate of one per cent. per annum. If the buildings had been consumed by fire the proceeds therefor would not have inured in any wise to the benefit of the mortgagors. There seems to have been no contracts wherein the Galeton Cotton Mills was authorized to take out this insurance and charge the cost of it to the movant. This being true, it is the opinion of the undersigned that respondent had no right to charge to operating expenses the insurance premium, and I therefore find in favor of the movant against respondent on this ground the sum of $3,502.52 as principal, and interest

from the 30th day of April, 1896, at the rate of 7 per cent. per annum making $353.45."

As to the finding upon this item, I think the special master was clearly in error. The holding of this property by the purchasing committee for the bondholders, and afterwards by the Galeton Cotton Mills has been analogized all along to the holding of real estate by a mortgage in possession with the same rights, duties and liabilities, except as has been hereinbefore mentioned, these purchasers, in view of the manner in which they went into possession, the character of their possession, etc., would be entitled to somewhat more liberal treatment than the usual mortgage in possession. It is certain that no stricter rule of liability would be applied to them than that to which the law would hold a mortgagee in possession, whose duty it was to account to the mortgagor; and even in this view of the matter, it seems clear that it was the duty of the parties in possession of this property to keep the same insured. It appears from the report of the special master that this insurance was taken out in the name of the Galeton Cotton Mills, but it would have inured, in case of loss, necessarily to the benefit of all parties at interest.

A memorandum attached to the brief of counsel for the purchasers shows that the $3502.52 was not at all on real estate and machinery, but that part of it was on cotton in process of being worked, and manufactured goods, the output of the mill. This statement shows $1815 on buildings and machinery, and $1687 on cotton and goods. Unquestionably the purchasers should be allowed credit for this latter sum on the manufactured goods going through the mill, as one of the expenses of the business, and I am about as well satisfied as to their right to the $1815 on buildings and machinery if this memorandum represents the facts of the case. I am unable, however, to find anything in the evidence which shows any such division of the insurance as this statement claims, and it must therefore be treated, for the purposes of this decision, controlled as the question here is by the record, as insurance on buildings and machinery. Even allowing this to be true, I think the special master should have allowed the purchasers this $3502.52 as a credit. Treating the hold-

ers of this property as mortgage creditors in possession, which is the effect of the decisions heretofore made in the case, it was reasonable care on their part to keep the property insured for the benefit of all the parties at interest; it was probably their duty to do so. But in any event, in case of fire, the amount received for insurance would necessarily have resulted to the benefit of the mortgagors. Looking at it in another way, it was a proper and legitimate expense connected with the holding and management of the property and one which could be paid out of the earnings of the mill. Why it should not be allowed as a just expense in connection with the possession and management of this property, I am wholly unable to see. No attempt will be made to discuss the numerous authorities cited pro and con. Sufficient it is to say that I am satisfied upon the law and facts, that the amount above named, $3502.52, principal and $353.45 interest should be deducted from the finding by the master in favor of the movants. Making this deduction there would be left $35,857.54 in favor of the movants. The other exceptions by both parties are hereby overruled, and the report of the special master, except as stated, is confirmed.

This February 23d, 1898.

WM. H. NEWMAN, U. S. Judge.

Filed in office Feby. 23. 1898. O. C. Fuller, Clerk.

DECREE ON EXCEPTIONS TO REPORT OF MASTER.

In the Circuit Court of the U. S. for the Northern District of Georgia.

J. J. Robinson, Trustee,
vs. No. 360. In Equity.
The Ala. & Ga. Mfg. Co., et al.

In the matter of reference to Master and Exceptions to his Report by the Galeton Cotton Mills and J. J. Robinson, Trustee, and Exceptions of the Ala. & Ga. Mfg. Co. the Huguley Mfg. Co., and W. T. Huguley.

This cause having come on to be heard upon the report of T. B. Felder, Esq., Special Master, to whom it was

referred by decretal order of this Court, dated 16th of March, 1896, and said exceptions having been argued by counsel, it is thereupon ordered, adjudged and decreed as follows:

1. That the first exception filed by said Galeton Cotton Mills and the said Robinson, trustee, be and the same is hereby sustained, and that the sum of thirty-five hundred and two dollars and fifty-two cents, principal, and three hundred and fifty-three dollars and forty-five cents interest, charged against the purchasers in master's report, making a sum total of thirty-eight hundred and fifty-five dollars and ninety-seven cents, being the sum for principal and interest paid out for insurance, should be deducted from the finding of the master in favor of the movant, which sum being deducted from the amount so found by the master in favor of the movant would leave the sum of thirty-five thousand eight hundred and fifty-seven dollars and fifty-four cents, which is decreed in favor of the movants.

2. All other exceptions by parties to the record are hereby overruled, and the report of the special master confirmed.

3. The costs of all exceptions overruled will be taxed against the party filing the same, and the costs of the exceptions sustained will be taxed against the movants.

4. The decree is rendered without prejudice to the right of J. J. Robinson, trustee. and the Galeton Cotton Mills, or other party at interest, to have the costs, fees and expenses ascertained, adjudged and taxed as against the proceeds of the sale of the mortgaged property and as against the sum ascertained to be due on exceptions to the master's report, and without prejudice to their right to have said sums so found to be due by the master's report after costs, fees and expenses are deducted, applied to the decree of this court in favor of said plaintiff against said defendant, if it shall appear that the plaintiff is so entitled.

Motion for that purpose having been this day filed. This Feby. 28, 1898. WM. T. NEWMAN, U. S. Judge.

Filing: Filed in Clerk's office 28th day of Feb., 1898.
O. C. FULLER, Clerk.

PETITION OF W. R. HAMMOND, ET AL., FOR ALLOWANCE OF FEES.

U. S. Circuit Court.

J. J. Robinson, Trustee,
vs. In Equity.
Ala. & Ga. Mfg. Company, et. al., Huguley Mfg. Company.

W. R. Hammond, John M. Chilton, Allen Fort and John C. Reed, represent to the Court, as counsel for the Huguley Mfg. Company, they have prosecuted the application of said Huguley Mfg. Company on the hearing before Thomas B. Felder, special master, appointed by this Court to ascertain the amount due to the said Huguley Mfg. Company by the Galeton Cotton Mills, for the use and occupation of said property, and before this Court, which application has resulted in a finding by the special master, and by the Court, of the amount of $35,857.53, which amount, or a large part thereof, according to the opinion of this Court, already filed, but in which no decree has yet been rendered, is to be applied to the payment of the balance due the bondholders of the Ga. & Ala. Mfg. Co. of the principal and interest on their bonds, as shown by the decree of the Court, and your petitioners pray the Court, the Huguley Mfg. Co., joining in the petition, that they be allowed out of said fund their fees, as attorneys, for bringing the same into Court, and that the Court ascertain the amount due them for their services as counsel in said proceeding, and allow them a lien on said fund for the same, and that only the balance of said fund, after the ascertainment and allowance of said fees, shall be credited or paid over to said mortgage creditors, and that the Galeton Cotton Mills be required to pay into Court for the benefit of your petitioners, whatever amount may be ascertained to be due them as counsel fees for such services, and that your petitioners may have a lien upon said property for said amount of their fees in said cause, in the event of the failure of the said cotton mills to pay the same into Court.

Your Petitioners pray for such other and further relief

as they may be entitled to, in accordance with the principles of equity, for the enforcement of said lien upon said property or said fund, or of their rights in the premises in any other way.

W. R. HAMMOND,
JOHN M. CHILTON,
ALLEN FORT,
JOHN C. REED.

Service: Service acknowledged, copy waived. Apl. 6, 1898.

P. H. BREWSTER,
B. F. ABBOTT,
Sols. as of Record.

Filing: Filed in clerk's office April 18, 1898.
W. C. CARTER, Dep. Clerk.

In the Circuit Court of the United States for the Northern District of Georgia.

J. J. Robinson, Trustee, and the Galeton Cotton Mills,
vs. In Equity.
Alabama & Georgia Mfg. Co., Huguley Mfg. Co.

APPLICATION TO TAX COSTS AND TO APPLY RENTS AND PROFITS TO MORTGAGE DEBT.

In order to make clear what is now for hearing and determination in this case, it is probably best to give a brief statement of what has occurred before during the progress of the case.

On the 21st day of January, 1891, J. J. Robinson, trustee, filed a bill in this Court, against the Alabama & Georgia Manufacturing Company, the Huguley Manufacturing Company and W. T. Huguley for the purpose of foreclosing a mortgage executed by the Alabama & Georgia Mfg. Co., to Huguley, Yancey and Robinson as trustee.

Yancey was dead, Huguley's interest was alleged to be adverse to that of the bondholders, so that Robinson filed the bill alone and made Huguley a party defendant. The foreclosure was for default in the payment of interest; the defense was that the interest was tendered within the time required, and that under the facts complainant was not entitled to a foreclosure. A decree was rendered foreclosing the mortgage, in the Circuit Court, which was reversed in the Circuit Court of Appeals, not because of any error in the decision of the Circuit Court that complainant was entitled to foreclosure, but on the ground that there had been no accounting as to the bonds on which the interest had been paid, and those on which the interest had not been paid.

In the meantime, and pending the appeal, the property had been sold and had been bought in for the bondholders by a committee representing their interests. The case coming back to the Circuit Court, the Huguley Mfg. Co. demanded restitution, which was awarded on certain conditions, which conditions were not complied with. The case was referred to a master, an accounting was had and decree subsequently rendered foreclosing the mortgage for $45,000.00 principal and $17,005.92 interests, with costs. Under this decree the property was sold for $66,000.00. Afterward the property was again sold and bought by the former purchasers, that is, by the mortgage bondholders. There had elapsed between the first and second sales three years and eight months. An application was made to the Court by the Huguley Mfg Co. to require the purchasers to account for the rents and profits during the time of their possession under the first sale and before the second purchase. An order was granted to this effect and a master appointed to hear evidence and take the account. The master, after a lengthy hearing, reported the amount of the rents and profits during the three years and eight months, which report, after slight modification, was approved for $35,857.53.

Judgment had been rendered in favor of Robinson, trustee, for any deficiency between the amount of his debt and the amount the property brought at the sale. This deficiency is a few thousand dollars more than the amount of the rents and profits found by the master against the purchasers.

Motion is now made by the purchasers, who, as stated, are the bondholders, to set off the amount found for rents and profits during the time of their possession between the two sales against the amount of the deficiency decree. This is resisted by the Huguley Mfg. Co., it is claiming the rents and profits, and that is the question now presented for determination.

The mortgage under which the property was sold was made by the Alabama & Georgia Mfg. Co., in January, 1884. Subsequently, by reason of some litigation in the State Court, the property of the Alabama & Georgia Mfg. Co. went into the hands of a receiver and was sold and bought by persons who afterward organized the Huguley Mfg. Co., they buying at the receiver's sale subject to the mortgage of Robinson, trustee. The contention now is that while the Alabama & Georgia Mfg. Co. does not, and that subsequently a debt against the Alabama & Georgia Mfg. Co. can not be set off against a debt which is due to the Huguley Mfg. Co., the said last named company having been deprived of possession by virtue of the first sale, it is claimed that the possession of the purchasers was in its right and that the rents and profits accrued to it. The proposition stated in general terms is this: That one buying mortgaged property does not assume the mortgage debt, that he purchases simply the equity of redemption in the property, and that as he does not undertake to pay the mortgage debt he can not be required to pay it, nor can anything due him be applied by the Court to its payment further than the property itself. Consequently, it is said in this case that the income of his property for the three years and eight months that the purchasers were in possession between the two sales was, by virtue of the fact they were ousted from the possession at the time of the first sale, rightfully due the Huguley Mfg. Co., and that as the balance of the mortgage debt was due by the Alabama & Georgia Mfg. Co., that which was due the Huguley Mfg. Co. can not be applied to the payment of the debt of the Alabama & Georgia Mfg. Co.

The difficulty about this contention is that the amount found by the master as rents and profits, is the rents and profits of the mortgaged property, and during the period when the mortgagee was in possession as purchaser under a

sale regularly made under a decree of this Court. Their possession was not legal in the sense that it was wrongfully or usurped, indeed it can hardly be said that their possession was illegal at all. They certainly went lawfully into possession of the property, and after restitution was ordered by the Court, it was, on terms which the Huguley Mfg. Co. failed to comply with, and the effect of that order undoubtedly was to recognize the justice of their possession until the Huguley Mfg. Co. did that which the Court had required as a prerequisite to restitution. But the effect of all the decisions unquestionably was, and the order of the Court was, that their holding was such that they must account for the rents and profits during the three years and eight months referred to. Now should the amount of the rents and profits be paid over to the Huguley Mfg. Co., or be applied to the extinguishment, so far as it will go, of the deficiency decree? It seems to me beyond question that the purchasers are entitled to have this amount applied to the balance due on their debt. In the first place the original petition filed in this case for restitution and for an accounting, etc., asked that the rents and profits of the property should be applied to the payment of the mortgage debt. The language of the petition, after asking that the rents and profits be applied to the repayment of such portion, if any, of $10,000.00 as petitioners might be held liable for, asked that the same be applied "next to the payment of any interest in arrears on said $65,000.00 of said bonds," and that then the remainder be paid to the Huguley Mfg. Co. In addition to this the Court, by its order of June 25th, 1896, on the coming in of the report of the commissioner making the second sale, provided, among other things, as follows: "It is ordered, adjudged and decreed that should the said accounting finally result in a judgment in favor of the Huguley Mfg. Co., then such judgment for any amount thereof in excess of any deficiency due by the defendants to the complainant in the foreclosure proceeding shall, for such excess be and remain a lien upon said property in favor of the Huguley Mfg. Co., as against the purchasers at said sale or any persons holding under them." So that it appears that the Huguley Mfg. Co., through its counsel, conceded prior to the filing of the report by the special master that the

rents and profits should be applied to the extinguishment of the remainder of the mortgage debt. It is unnecessary, however, to hold the Huguley Mfg. Co. to the language of their petition or of the order referred to, for the purpose of disposing of the case, but the prayer of their petition and the order of Court which was taken at the time without objection, so far as appears, indicate what the view of counsel on both sides was at the time as to how these rents and profits should be applied. But independently of this the rule seems to be thoroughly established by all the authorities that where a mortgagee goes legally into possession of the mortgaged property, as these mortgages certainly did, that they are only accountable for the rents and profits by the application of the same to their debt. These people were in possession of the property on which they had their mortgage, and were operating the property after having gone into possession under a decree regularly entered and a sale regularly made. They made these profits themselves. Shall it be held that they must pay them over to another so long as their debt for the whole of which they were given a lien on the mortgaged property remains unpaid? It must be remembered that during the time of their possession between the two sales, that the whole mortgaged debt, with its lien, existed against the property. The first sale having been set aside, the mortgage and the whole debt stood open against the property, and therefore these purchasers, it seems to me, stood like any other mortgagee going legally into possession of property with the duty to account for the rents and profits, but with the equal right to apply the same to their mortgage debt.

It is not denied, as I understand it, in the argument, that if a bill had been filed alleging insufficiency of this property to pay the mortgage debt, that the Court would have appointed a receiver and would have, through such receiver, impounded the rents and profits in order to apply the same to the mortgaged debt. It is replied, however, that no such allegation was made when the bill was filed and no receiver asked for. The result has shown conclusively that the property was insuffieient to pay the mortgage debt, and will the Court deprive these mortgagees of the benefit of that which they themselves have

made in the way of rents and profits while in possession as indicated, when it would, by positive order, have given the benefit of such rents and profits if they had asked them in advance ? In Kountz vs. Omaha Hotel Company, 107 U. S., 378, it is held that "courts of equity always have the power where the debtor is insolvent and the mortgaged property is an insufficient security for the debt, and there is good cause to believe that it will be wasted or deteriorated in the hands of the mortgagor, as by cutting of timber, suffering dilapidation, etc., to take charge of the property by means of a receiver, and preserve not only the corpus but the rents and profits for the satisfaction of the debt." This doctrine is reiterated in Grant vs. Insurance Co., 121 U. S., 105, and in Shepard vs. Pepper, 133 U. S., 626.

It is not denied by council for the Huguley Mfg. Co., that as against the Alabama & Georgia Mfg. Co. the bondholders in possession would have had the right to have these rents and profits applied to the extinguishment of the mortgage debt. Where by private sale or by judicial sale the equity of redemption passes out of the mortgagor into a third party, does the third party acquire any more right in this respect than the mortgagor had? In other words, can the rights of the mortgagee which have passed to him by the contract of mortgage be affected in any way afterwards by change in any respect in the holder of the equity of redemption? If so, it would be in the power of the mortgagor to give to a third party rights as against the mortgagee which he himself did not have. It being fundamental that the mortgagee in possession has the right to apply the rents and profits to the extinguishment of the mortgage debt as against the mortgagor, the contention it seems is entirely unsound that a third party should claim such rents and profits when the mortgagor himself could not. If so the inviobility which is supposed to attach to valid contracts is to that extent destroyed.

The light thrown on this case by the very full and able argument on both sides, of this last question, makes it exceedingly doubtful in my mind as to whether or not the proper direction was given the case at the time application was made by the Huguley Mfg. Co. for restitution. I am

not clear but that the right course which would have been to have only allowed these purchasers to be disturbed in their possession by the payment to them of the mortgage debt, or at least of that part of it which by the finding of the master had failed to receive interest and which was entitled to foreclosure. It is of course useless to discuss that matter now except as it may help to elucidate the present question.

In the case of Bryan vs. Kales, 162 U. S., 411, it is held: "When a mortgagee is in possession of the mortgaged real estate claiming under a foreclosure sale, one claiming under mortgagor cannot by setting up that the foreclosure proceeding was invalid, maintain ejectment to recover the premises without his offering to redeem and tendering payment of the mortgage debt." It is said in reply to this case, by counsel for the Huguley Mfg. Co., that in the case cited it was a collateral attack upon the the judgment of foreclosure, but an examination of the opinion shows that the Court waived any expression of opinion as to whether it was open to attack collaterally and simply decided that in any event the rule just announced, which is the head note of the case, was the correct one and was controlling independently of other questions.

If the Huguley Mfg. Co. could not oust the purchasers in this case without paying to them the entire mortgage debt, how can they claim for themselves that which went into the hands of the purchasers as rents and profits of the property so long as it is insufficient to discharge the mortgage debt? It seems too clear for discussion that so long as the mortgagees have not received more than the amount of their debt out of the property, that one claiming under the mortgagor cannot sustain a claim against them for that which is earned by the property.

A large number of authorities have been cited on both sides in this discussion and the argument has taken rather a wide range, but I deem it unnecessary to go further into the case.

The contention for the Huguley Mfg. Co. has been very thoroughly and very ably presented but I do not think it is sound. It seems clear to me that these bondholders as purchasers while in possession were entitled to have the rents and profits derived from the mort-

gaged property applied to the payment of the bonds and interest thereon and that the Huguley Mfg. Co. is not entitled to the same.

At the time the purchasers took possession of this property there were on hand certain findings, as they are called, certain personal property in the mill which was not covered by the mortgage. This was used by the purchasers and the Special Master in his report values the findings at $2500.00. This report was confirmed by the Court. It is apparent that the money derived from this source can not be applied to the mortgage debt. It is earnestly contended, however, that if this property was not embraced in the mortgage the Court has nothing to do with that in this case, that the finding of the Master was gratuitous and that the parties should be left to their legal remedy outside of this litigation. The Court put these purchasers in possession of all this property and the findings were on hand in the mill at the time possession was awarded. Therefore the proper application of this amount, in order to do complete equity and wind up this litigation, should be determined by the Court here and now.

As to this $2500.00 I am of opinion that it must be accounted for to the Huguley Mfg. Co. by the Galeton Cotton mills. As to the amount found by the Special Master for rents and profits of $35,857.53 it must go so far as it does, to the extinguishment of the mortgage debt and interest. A decree may be taken in accordance with these views.

This April 11th, 1898.

W. T. NEWMAN, U. S. Judge.

Filed in Clerk's office 11th day of April, 1898.

O. C. FULLER, Clerk.

MOTION OF HUGULEY MFG. TO ASCERTAIN BALANCE DUE ON MORTGAGE DEBT, ETC.

United States Circuit Court.

J. J. Robinson, Trustee,

vs. In Equity.

Alabama & Georgia Manufacturing Company, Huguley Mfg. Co.

The defendant, the Huguley Mfg. Company, come

know, after the opinion by the court in reference to the application of the amount found to be due to it by the Galeton Cotton Mills, and before final decree, and without prejudice to its right to except to any ruling made in the cause in reference to the report of the special master, and without prejudice to its right of appeal from any decree that may be hereafter rendered by the court, denying it the right to recover the amount of the rents and profits due it, from the Galeton Cotton Mills, and appropriating said amount to the payment of the balance due on said mortage indebtedness; and moves the court, if the court should render a final decree applying the rents and profits of said Galeton Cotton Mills to the payment of said balance of said mortgage debt, to apply the amount ascertained to be due to movant for said rents and profits, to the mortgage debt; at the time the rents and profits were earned, and ascertain the balance then due, and only charge movant with the balance of the mortgage indebtedness, thus ascertained, with interest from date of such application.

Movant suggests that the proper way to ascertain the date when this net earning of the mill should be applied, is to take the date half way between the first and last sales of the property, which would be August 1, 1891, and ascertain the amount of principal and interest due on the bonds at that date, and deduct the whole net earnings, as ascertained by the court, from said amount, and only charge movant with the difference from that date, to-wit, August 1, 1894, up to the date of the second sale of the property, and allow movant the difference between the amount the property brought at that sale, and the amount of the principal and interest due on said ascertained balance, at the date of the last sale, to-wit, May 6, 1896. Movant shows to the court that such difference would be the sum of $3,232.00, besides interest from May 6, 1896, which amount together with the amount of $2,500.00, principal, and $891.04 interest to October 9, 1897, allowed by the master for property converted, with interest on said $2,500.00 from October 9, 1897, movant prays may be allowed it in the final decree, as the amount due to it by the Galeton Cotton Mills, and that it may have a lien upon said mill and property for said amounts.

Movant attaches hereto a tabulated statement, showing the amount due as claimed herein.

W. R. HAMMOND,
JOHN M. CHILTON,
ALLEN FORT,
JOHN C. REED,
Attys. for Huguley Mfg. Co.

STATEMENT SHOWING THE AMOUNT DUE HUGULEY MFG. CO.,

As Per Opinion of Court on Last Hearing.

Amount of Decree, March 30, 1895.

(Last printed Record, p. 280-289.)

Principal, matured bonds	$45,000 00	
Int. to November 1, 1894	17,005 92	$62,005 92
Principal, unmatured bonds	$20,000 00	
Int. to November 1, 1894	3,451 24	$23,451 24
Total amount		$85,457 16
Deduct 3 mos. int. on prin	$65,000 00	
Plus coupons	17,440 00	
Total interest at 8 per cent.	$82,440 00	$1,648 80
Net balance due Aug. 1, 1894		$83,808 36
Deduct earning of mill, as shown by Master's report, without interest, and less item of insurance, disallowed by court		$28,748 76
Leaves balance due on Aug. 1, 1894		55,059 60
Interest on same to date of last sale, May 1, 1896, 1 yr., 9 mos		7,708 40
Total amount due May 1, 1896		$62,768 00

Amount of sale May 1, 1896....		66,000 00
Balance.....		$3,232 00
Int. to April 16, 1898.....		506 60
Balance surplus (acct. rents and profits).....		$3,738 60
Add amount allowed for property converted, prin.....	$2,500 00	
Interest to October 9, 1897....	891 04	3,391 04
Int. on $2500.00 to April 16, 1898.....		85 00
		$7,214 64

Service: Service acknowledged, copy rec'd. Apr. 16, '98.

P. H. BREWSTER,
B. F. ABBOTT,
Sols. as of record.

Filing: Filed in Clerk's office April 18, 1898.
W. C. CARTER, Dep. Clerk.

In the Circuit Court of the United States, for the Northern District of Georgia.

J. J. Robinson, Trustee, The Galeton Cotton Mills,
vs. Equity.
Alabama & Ga. Mfg. Co., The Huguley Mfg. Co.

The question before the Court on the last hearing in this case, relates to giving practical direction to the finding of the Court as to the manner in which the last ru ling in the case as to rents and profits shall be carried into effect. The Court decided in an opinion filed on the 11th instant, that the deficiency decree, as to the balance due the mortgage debt, could be set off against the rents and profits. It was taken for granted in that decision that the deficiency decree somewhat exceeded the amount found for rents and profits.

Counsel for the Huguley Mfg. Co.. now seeks to have the rents and profits applied to the deficiency decree, or credited thereon in such way as to change the result and leave a small balance in favor of the Huguley Company. It is claimed that the rents and profits should be credited on the deficiency decree at the time such rents and profits were earned, and that the law will now apply them in that way. So as we have no data by which to apply them at stated intervals during the period of time elapsed between the two sales, the first day of August, 1894, is taken by counsel as a period midway between the first and the last sale upon the theory that that will establish an average, and the claim is that the credit should be made as of that date.

The result of this contention, if carried into effect, is really to increase the amount found by the Special Master in favor of the Huguley Mfg. Co. On some of the items found by the Special Master he allowed interest from a period before the last sale, and on some he did not. So that attention was necessarily called to this fact as it appeared in the report. If fault was found with this report by the Huguley Mfg. Co., it should have excepted to the same at the time the other exceptions were filed. No exception was made on this ground, however, and the report was confirmed at the last term of the Court. I think the report of the Special Master, as modified by the Court in the opinion filed February 23rd, of this year, fixes the amount which must be applied as against the deficiency decree.

There is no practical difficulty about the matter, because to the extent that these purchasers are compelled to pay the expenses of this litigation, the same should be credited, I think, on the amount of rents and profits, which would wipe out the amount claimed in its favor by counsel for the Huguley Mfg. Co. So that the motion of counsel to make the application the amount claimed in its favor of counsel for the Huguley of these rents and profits in the manner set out in their last petition to the Court, will be denied.

The matter of apportioning the costs between the parties will be disposed of by a later order.

This April 26th, 1898. WM. T. NEWMAN,
U. S. Judge.

Filed in Clerk's Office 27th day of April, 1898. O. C. Fuller, Clerk.

DECREE 4 JUNE, 1898.

U. S. Circuit Court for the Northern District of Ga.

J. J. Robinson, Trustee,
vs. No. 360. In Equity.
Ala. & Georgia Mfg. Co., et al.

This cause came on for further hearing on the application of said Robinson, trustee, and Galeton Cotton Mills, to tax fees, costs and expenses, and to apply net proceeds of amount of rents, issues and profits to the mortgage debt; and on the application of W. R. Hammond, J. M. Chilton, J. C. Reed and Allen Fort, for taxations of solicitors' fees, as against the amount of rents and profits, found by the master before application of the same to the mortgage debt; and after argument of counsel it was considered, ordered and decreed as follows:

1. The application of said W. R. Hammond, J. M. Chilton, J. C. Reed and Allen Fort for taxation of solicitors' fees against the amount of rents and profits, adjudged to have been earned by the purchaser of the property while in possession is denied.

2. That the sum of two hundred snd forty-six dollars and 97-100 dollars, being the total expenses incurred by the special commissioner, S. C. Dunlap, who was appointed to make sale of the property, be and the same is hereby taxed as against the purchase prices of said property, to-wit: sixty-six thousand dollars, it being the sum at which said property was bid off.

3. It being made to appear that the mortgage indebtedness at the date of said sale was the sum of sixty-five thousand dollars, principal, and thirty thousand, seven hundred and twelve and 01-100 dollars interest. The said net sum of sixty-five thousand, seven hundred and fifty-three and 03-100 dollars, is hereby applied to the said indebtedness as follows:

First. To the payment of said interest, and the balance of said purchase money, after discharging said interest,

said balance being $35,041.02-100 dollars is applied to the principal of said mortgage indebtedness, leaving a balance due on said mortgage debt of $29,958.98-100 dollars. To this last sum is added interest from April 30th, 1896, to Oct. 9th, 1897, at 8 per cent. per annum, which interest amounts to $3,455.22-100 dollars, which principal and interest added together make a total sum due on said mortgage debt of $33,414.21-100 dollars up to said Oct. 9th, 1897.

4. The amount of rents and profits as allowed on exceptions on the master's report, after deducting the amount found for supplies and findings, to-wit: $2,500 dollars principal, and $891.04-100 dollars interest, making a total of $3,391.04-100 dollars, principal and interest as found for rents and profits, leaves $28,748.77-100 dollars principal, and $3,717.73-100 dollars interest, which sums added together make a total of $32,466.50-100 dollars for principal and interest to 9th of Oct., 1897.

This total sum is hereby taxed with the following items of costs and expenses:

The balance costs of this cause, $182.00-100 dollars.

The fees of T. B. Felder, special master, in part, the sum of $2,500.00-100

The fees of Julius L. Brown, special master, in part, $375.00-100 dollars.

The fees of D. O. Smith, stenographer, in part, $875.00-100 dollars.

The fees of A. L. Waldo, $200.00-100 dollars, which sum added together, and being deducted from the said $32,466.50-100 dollars, leaves the net amount of $28,334.00 100 dollars which is hereby applied to the mortgage debt, and when so applied leaves a balance of $5,079.70-100 dollars. And for which balance it is decreed in favor of the plaintiff against the Ala. & Ga. Mfg. Co., with interest at 8 per cent. from the 9th of Oct., 1897.

5. The former decree of this Court provides that the purchaser of the property may pay the purchase price in the bonds of said defendant, to the extent that such bonds would be entitled to share in the net proceeds of the sale, if the purchase price was paid in cash; and in order to adjust the rights of the bondholders who became the purchasers and to ascertain the extent to which the bonds

may be used in paying the purchase price, and to ascertain the extent to which each bondholder may share in the net proceeds of the said property, and of its income, which two sums added together, after all costs and expenses, taxable against said defendant are deducted, amount to $94,087.53-100 dollars, as of date October the ninth, 1897.

As between the bondholders themselves said sum is hereby further decreed to be subject to the further deduction as follows:

(a) The costs, expenses and attorney's fees paid out under the first sale of the property and which sale was set aside; which costs and expenses are as follows:

To Dorsey, Brewster & Howell, solicitors' fees.	$1,000.00
To Abbott & Smith, solicitors' fees.....	1,000.00
To N. D. Denson, solicitors' fees	600,00
To J. J. Robinson, Trustee.....	500.00
To A. E. Buck, Special Commissioner.....	400.00
To costs and advertising and Comr. Exp....	372.00
To Court Costs.....	230.50
	$4,102.50

(b) The solicitors' fees of Dorsey, Brewster & Howell, $4,000.00; solicitors' fees of B. F. Abbott, $4,000.00; the same being for services rendered as solicitors for the trustee, J. J. Robinson, and the bondholders in said cause, and the purchasers of the property, and the Galeton Cotton Mill, in defense of the cross-action brought by the Alabama & Georgia Manufacturing Company, for accounting for rents, issues and profits, the same appearing to be reasonable and just, the said sums are subject to a reduction of $500.00 paid to said Dorsey, Brewster & Howell, and $500.00 paid to said B. F. Abbott out of funds in the hands of S. C. Dunlap, special commissioner under order of this Court.

And for said balance due them said solicitors are hereby decreed and have a lien on the proceeds of said property and its income in preference to the lien of the mortgage to secure the bonds; the said balance to be and remain a lien on the property itself in the hands of the purchasers at the second sale.

6. It is further decreed that the sum recovered by the Huguley Manufacturing Company, to-wit: $2500.00 principal, and $894.04 interest, the same being for supplies and findings, is hereby is hereby taxed with the sum of $750.00, the same being the proper share of the costs taxable against the said Huguley Manufacturing Company as against the special finding in its favor; for the balance of said special finding, after deducting the said $750 00, the same to be a lien on the mortgaged property in the hands of the purchasers.

7. It is further decreed that if any of the bondholders should elect not to join in the purchase of the property such bondholders shall be entitled to receive the percentage to which said bonds shall be entitled on distribution, subject of course to any payments that may have been made on the same on the former sale of the property, and subject to all proper taxation for costs and fees, and other proper adjustment according to the scope and effect of this decree. And the purchasers shall pay into Court sufficient money to settle with the bondholders who do not join in the purchase if any such shall be necessary.

8. In making distribution, any bonds on which a percentage has been paid in cash to former holders, and credited thereon for money paid into Court under the first sale of said property, shall be controlled by the person or persons so paying the money into Court for the purpose of reimbursement of such money so paid, and the person so paying said money shall be entitled to receive all dividends that such bonds may be entitled to until they are reimbursed, the amount so credited on said bonds and interest thereon at 8 per cent. per annum. And the original holders of said bonds are not entitled to receive any percentage on said bonds until after the amount so advanced is repaid to the person so advancing it.

9. The Court reserves all questions as to the taxation of costs, fees and expenses, except as hereinbefore decreed and set forth in paragraph 5, a and b

All moneys paid out, or which may hereafter be paid out on the part of said trustee, or the bondholders, or the purchasers of the said property, or the Galeton Cotton Mills or other persons for, and on account of said property, or in connection with said first or second sales, and all ques-

tions as to the right of such person or persons to be reimbursed who has paid out, or may pay out, any sum for such expense, are reserved for future decree before any distribution is made of the proceeds of the mortgaged property.

This reservation to include the right to pass on the account of L. Lanier, Esq., as agent and trustee for the bondholders in the prosecution and defense of all this litigation.

10. It is also represented that $65,000.00 of bonds of the Galeton Cotton Mills were issued for the purpose of taking the place of a similar amount of bonds of the Ala. & Ga. Mfg. Co., and that the purchasers of the property, either paid the interest on the bonds or procured it to be paid for several years.

The right of the purchaser or such other person paying said interest to be reimbursed out of the proceeds of said property before any distribution is made is reserved for future decree.

The Court reserves the right to make any other and further decree in the premises, adjusting the rights of the bondholders among themselves as may appear to be equitable and just.

In open Court June 4th, 1898.

WM. T. NEWMAN, U. S. Judge.

Filing: Filed in clerk's office June 4, 1898.

O. C. FULLER, Clerk.

PETITION OF L. LANIER FOR A DEED ABSOLUTE.

In the Circuit Court of the United States for the Northern District of Georgia.

J. J. Robinson, Trustee, et al.,

vs.

Alabama & Georgia Mfg. Co., et al.

The petition of L. Lanier respectfully shows

That under a decree of this Court in said case the mortgage property set out in original bill in said cause was sold

on first Tuesday, the 6th day of May, 1896, and at said sale your petitioner represented such of the bondholders as were living to join in said purchase at said sale, purchased such property at and for the sum of $66,000.00, of which sum the sum of $5,000.00 was paid in cash, the balance to be paid in bonds.

Your petitioner further shows that at the time of said sale there was pending before T. B. Felder, Esq., special master of said Court, a reference to an account of the rents and profits of said mortgage property.

Your petitioner further shows that the confirmation of said sale which was had June 25th, 1896, the order of confirmation provided as follows:

"An order of reference having heretofore been entered in this cause directing T, B. Feldner, Esq., to ascertain and report to the Court certain claims for rents, profits, wastes and conversion in respect to said property, and said investigation now being in progress before said special master, it is ordered, adjudged and decreed that should the said accounting result in a judgment in favor of the Huguley Manufacturing Company, then such judgment for any amount thereof in excess of any deficiency due by the defendants to complainant in the foreclosure proceedings shall for such excess be and remain a lien upon said property in favor of the Huguley Manufacturing Company, and remain a lien upon said property in favor of the Huguley Manufacturing Company as against the foreclosure at said sale or any person holding under them, and the Court reserves the right to seize and order sale of said property for the purpose of satisfying any such balance so found to be due as hereinbefore set out and title shall be made by said commissioner to the purchaser subject to this provision."

Your petitioner further shows that at the date of said sale and confirmation no report had been made by said master, and it being impossible to determine anything as to a distribution of the proceeds of the said sale until the report of said master was made, no deed was ever made by the commissioner to the property to your petitioner.

Your petitioner further shows that now the master has made his report, to-wit: on the 9th day of October, 1897,

and said report was finally confirmed by this Court after disposing of exceptions filed thereto by both parties, to-wit: on February 28th, 1898.

Your petitioner further shows that by decree rendered in said cause since said report was affirmed shows that there is a deficiency judgment in favor of the complainant in the foreclosure proceedings, and the Huguley Manufacturing Company failed to get any judgment, except for a small sum for certain property, converted, to-wit: $2500.00 dollars and interest thereon is shown by master's report, and that the record shows that the net proceeds of said sale and the net proceeds of rents, and profits combined, are not equal to the amount of principal and interest due on the mortgage debt.

Your petitioner further shows that by the decree a large sum of money will have to be paid in to meet the expenses and costs as allowed by the decree, besides to satisfy those bondholders who do not join in said purchase.

Your petitioner further shows that quite a number of the bondholders are unwilling now to join in the purchase of said property but are insisting on taking their per cent. of the proceeds going to the bondholders in cash and are unwilling to furnish the necessary cash to comply with said decree and your petitioner will therefore be compelled to raise the money to pay the expenses, costs and fees, and those bondholders who require the cash in the distribution.

Therefore your petitioner prays the Court for an order requiring the commissioner to make to him as trustee or to such person or persons as he may direct, a deed absolute without any reservation as provided in said order of confirmation as to affixing a lien thereon or in favor of Huguley Manufacturing Company and free of any lien on the property in favor of Dorsey, Brewster & Howell, and B. F. Abbott, solicitors in the cause, on your petitioner complying wtih the decree in said case by paying into the Court enough money as may be necessary to pay all the expenses, fees, costs and such bondholders as may decline to turn in their bonds as payment on the purchase, and require payment of what is allotted to each, and he will ever pray, etc.

And that the Court will pass such other and further

order in the cause as to the Court may seem meet and proper in the premises.

DORSEY, BREWSTER & HOWELL, and
B. F. ABBOTT, Solicitors for L. Lanier.

Read and considered. Let this petition be filed. It is ordered that the above stated application be set for hearing at 10 o'clock on the 23 inst. Let copy be served on the Huguley Mfg. Co. or its counsel. This Sept. 22, 1898. WM. T. NEWMAN, Judge.

Service of a copy of the within petition and order is hereby acknowledged. Sept. 22, 1898.

W. R. HAMMOND,
Atty. for Huguley Mfg., and as of Record.

Filed in clerk's office 22 Sept., 1898.

O. C. FULLER, Clerk.

ANSWER TO PETITION OF L. LANIER FOR DEED, &c.

In the Circuit Court of the United States for the Northern District of Georgia.

J. J. Robinson, Trustee, etc.,
vs. In Equity.
The Ala. & Ga. Mfg. Co., et al.

In the matter of the petition of L. Lanier, filed in the above entitled cause, on the .... day of ....., 1898, praying that the decretal order of confirmation of 25th day of June, 1898, be modified, etc.

Comes the Huguley Manufacturing Co., one of the defendants in said petition and for answer to the same, says:

1. It admits that the mortgaged property was offered for sale on the 6th day of May, 1896, and it avers that said L. Lanier bid at said sale the sum of $66,000.00 professing to act in making said bid "as trustee for the holders of the bonds of the Ala. & Ga. Mfg. Co., and that said property was knocked off to him as such trustee for

the sum of $66,000. It denies that said Lanier professed to represent only a part of said bondholders, but aver upon advise that as he bid generally as trustee for the bondholders his bid was as trustee for all the bondholders.

2. Respondent admits that at the time of the sale a reference was pending for an account of the rents and profits. It further admits that the confirmation of the sale (which it avers was only partial) was had June 25, 1896, and that the Court in its decree then rendered, reserved a lien in favor of this defendant as set out in said petition.

3. This defendant admits that at the date of the sale and confirmation no report had been made by the special master and that it was impossible for them to determine anything as to the distribution of the proceeds of said sale "until the report of said master was made," but it denies that either of said facts furnish any reason for the failure of said purchasers to comply with their bid and they further deny that the failure to make a deed to the purchaser resulted from either of said facts as is impliedly alleged in said petition. The defendant on the contrary, avers that notwithstanding the pendency of said reference this Court, in said order of confirmation, directed the commissioner, who made the same, to execute a deed to the purchasers of the mortgage property "upon the purchasers complying with the terms of said sale." That this defendant resisted said decree of confirmation on the ground of the pendency of said reference and asked that the sale be postponed until after the coming in of the report of the master, and offered to bid at the sale if the same should be postponed.

But said purchasers insisted upon said decree of confirmation as the same was drawn, and that the same should be tendered without any postponement or delay. Wherefore, this defendant says that said Lanier is not in a position to insist that the pendency of said reference afforded any reason for not complying with said bid, and defendant avers that the true reason why a deed was not made to said purchaser as the commissioner was required to do by the terms of the decree of confirmation, was that said purchasers had not complied with their bid.

4. Defendant admits that the master has made his re-

port on said reference, that said report has been comfirmed, and that the amount ascertained thereby to be due the Huguley Mfg. Co. for rents and profits has been applied by this Court to the payment pro tanto of the alleged deficiency which the Court then proceeded at the instance of the solicitors of said bondholders to ascertain. That said deficiency was so ascertained by applying to the mortgage debt the amount of said bid, to-wit: $66,000, less $5,000, which had been paid into Court in cash, and certain charges said decree assuming as a predicate that said bid had been fully complied with. That in and by said decree which was rendered of date June 4th, 1898, and which is here referred to as a part of this answer, and which will be introduced as evidence on the hearing of this motion, the Court at the instance of the solicitors for said bondholders dealt with the sum bid as if it had been paid and was subject to the order of the Court. Wherefore defendant says that the said Lanier should not now be heard to insist that said bill has been complied with.

5. This defendant further states that the order fixing a lien on said property for the security of the Huguley Mfg. Co., if displaced, would leave this defendant without security for any sum that might be found ultimately due it if on appeal the United States Court of Appeals should reverse the decree of this Court overruling defendants' exceptions to the master's report, and should reverse the ruling of this Court applying the sum awarded to Huguley Mfg. Co. by the decree confirming said master's report, to the alleged deficiency in the mortgage debt. That this defendant has prepared its assignments of error for the purpose of taking said case up for review by appeal and the same would have been tendered before this to the Court but for the fact that the solicitors for this respondent reside in different states and have not yet been able to hold a conference with reference to said assignments. That as evidence of the intention to appeal we will, on the hearing of this motion, show the said assignment to the Court with the suggestion they will be filed within the next few days.

6. For further answer this defendant says that the bondholders of the Ala. & Ga. Mfg. Co., under the name of the Galeton Cotton Mills, have been in possession and

operating the mortgage property (a cotton mill) without any right or title and without paying said bid and have received the rents and profits of said property since the date of said sale. That they have never accounted for said rents and profits; and this defendant admits that they are not entitled to the relief prayed in said petition unless they shall offer in connection therewith to respond for such rents and profits.

7. This defendant states that as disclosed by said petition said Lanier does not represent all the bondholders, as trustee, for whom he bid at said sale, and to whom, as trustee, the property was knocked off. That it is sought in and by said petition to substitute new and different purchasers instead of those who bid for said property at the sale. Wherefore, this defendant says that said petition should not be granted.

8. For further cause against the granting of said petition this defendant states to the Court that by the original decree of sale under which said property was sold on May 6th, 1896, the terms of sale were fixed as for cash, or to be paid in bonds of the Ala. & Ga. Mfg. Co., with $5000 in cash. That in and by said petition it is sought to change the terms of said sale into a sale on a credit extending from the date of sale down, to at least the present time, said bondholders in the meantime enjoying the rents and profits of the property; and further to change the terms of the order confirming said sale by displacing the lien of this petitioner so as to enable Lanier to mortgage the property to raise the purchase money, whereas, by the terms of the sale, bidders were not invited, undes such advantageous conditions.

9. For further cause against said petition defendant says that said Lanier is in contempt of this Court in this: 1st. That as disclosed by this petition he bid for persons for whom he was not authorized to bid at said sale; 2d., that as shown by this answer he and some of the bondholders for whom he was possibly authorized to bid have asked for and obtained orders having for their necessary predicate the assumption that said bid had been complied with, without informing the Court of such non-compliance; 3d, that he has waited since May 6th, 1896, to the present time before informing the Court of his non-compliance

with said sale. Wherefore this defendant says that said Lanier should not be heard to ask for the relief prayed for in said petition.

And having answered this, defendant prays that said petition may be denied and that defendant be discharged with its reasonable costs.

J. M. CHILTON,
W. R. HAMMOND.
J. C. REED,
Solrs. Deft.

Filing: Filed in clerk's office 4 day of Oct., 1898.
O. C. FULLER, Clerk.

DECREE UPON PETITION FOR DEED ABSOLUTE.

U. S. Circuit Court for the Northern District of Georgia.

J. J. Robinson, Trustee,
vs. In Equity. No. 360.
Ala. & Ga. Mfg. Co., et al.

Petition for Order Directing the Commissioner to Make Deed to the Property Involved in Litigation Upon Compliance with the Terms of the Purchase.

This matter came on to be heard and was argued by counsel, and thereupon it was considered, ordered and decreed as follows:

It appearing that the first sale of the property involved in this case was on the 6th day of September, 1892; that L. Lanier, et al., for and on behalf of the bondholders bid in said property at and for the sum of $10,000,00 and paid into Court on said purchase the sum of $10,000-.00, which sum was distributed under and by order of this Court before any notice of an appeal was given, and before any reversal of the decree under which said sale was made.

And it further appearing that at the second sale of said property the said L. Lanier, acting for and on behalf of said bondholders, again bid in the property for the sum of $66,000.00, and paid into the hands of the commis-

sioner the sum of $5,000.00, which sum has also been distributed under and by order of this Court.

And it further appearing to be equitable and just that the purchasers should have credit on said purchase for said sum of $10,000 00, with interest thereon from Sept. 1892, the date of the first sale, as well as said $5,000.00 paid at second sale, and that he should be required to pay into Court only the balance of said purchase money, to-wit: $66,000 after the sum is reduced by said $10,000 and interest, and $5,000 as above.

The purchasers being now desirous of completing their purchase, and it being the opinion of the Court that said purchase should be completed, and that a title free from all liens and encumbrances be made to the purchaser, upon his compliance with the terms of his bid, and that such title should be made as of date May 5th, 1896.

And it further appearing by decree of confirmation rendered June 25th, 1896, that it is provided among other things as follows: "An order of reference having been entered in this cause directing T. B. Felder, Esq., to ascertain and report to the Court certain claims for rents, profits, waste and conversion, in respect to said property, and said investigation being now in progress before the special master, it is ordered, adjudged and decreed that should said accounting finally result in a judgment in favor of the Huguley Mfg. Co., then for such judgment, or any amount thereof in excess of any deficiency due by the defendants to said complainants in the foreclosure proceedings, shall for such excess be, and remain a lien upon such property in favor of said Huguley Mfg. Co., as against the foreclosure at said sale, or any person holding under them, and the Court reserves the right to seize and order a sale of such property, for the purpose of satisfying such amount so found to be due as hereinafter set out, and title shall be made by said commissioner to the purchaser, subject to the following provision."

And it appearing that owing to the delay in the determination of the questions submitted to the special master, it has been impracticable to pay for said property in bonds of the Ala. & Ga. Mfg. Co., as provided in the decree of foreclosure, and whereas the said Huguley Mfg. Co. has

given notice of an intended appeal of said cause to the Circuit Court of Appeals, which will render it impracticable under such notice to ascertain definitely to what extent the bonds of the Ala. & Ga. Mfg. Co. could be used for the purpose of paying the purchase money as provided in said original decree, and this Court being of the opinion that it is for the best interests of all concerned, that said property should be settled for by the purchaser, and a full and complete title be made by the commissioner to said purchaser, or to such person as he may direct, free from all liens, claims or demands in favor of any person or corporation, party to this record.

And it further appearing that the said Huguley Mfg. Co. has failed to obtain any decree in the cause which could be operative as against the property under the provisions of said decree of confirmation, it is therefore ordered that the decree of confirmation be modified with respect to the provisions fixing a lien on the property in favor of the Huguley Mfg. Co., as to any amount it might ultimately be decreed to be entitled to, and that the before recited provisions of said decree of confirmation be set aside, and whatever rights the said Huguley Mfg. Co. may hereafter be adjudged to have, and any claim that they may have, or may hereafter be adjudged to have, be transferred to the net proceeds of the sale of the property, to be paid into the registry of this Court, as hereinafter specified.

And it is ordered and decreed that the purchaser do pay into the Court within forty days from this date the whole of the balance of the purchase money of said property, to-wit, $48,433.36-100 dollars principal, with interest thereon from the 6th of May, 1896, at 7 per cent. up to date of payment, the same being the balance of the purchase money, and interest, less $10,000.00 paid into Court at the first sale, with interest thereon at 7 per cent., and less than $5,000.00 paid in cash at the time of the second sale; and that upon certificate of the Clerk of the fact of such payment, thereupon the commissioner, S. C. Dunlap, Esq., do execute and deliver to said purchaser or such person as he may designate, a deed to the property sold, and the purchaser shall thereupon become vested with a good and clear title

to said property, as of date of sale, and with the same effect in all respects as to all persons whatsoever, as if said sale had been completed, and the property conveyed to him upon the date thereof, May 5th, 1896.

And it is further decreed that all claims of the Huguley Mfg. Co., or other parties to this litigation, shall be transferred from said property to the net proceeds of said sale as hereinafter mentioned, and the said net proceeds alone be answerable for all claims, legal or equitable, if any so exist, in favor of said Huguley Mfg. Co., or other persons, parties to this litigation, growing out of use and occupation of said property since the first sale, as well as for the claims in favor of Dorsey, Brewster & Howell and B. F. Abbott, Esq., solicitors for the complainants in said litigation. It being the intention of this decree that this Court do release said property from all claims of all parties to this litigation of whatsoever nature, and to transfer such claims, if any exist, to the fund of the Court.

The Clerk of this Court, O. C. Fuller, will pay to the following persons the following amounts respectively, and take their receipts therefor in full settlement of such claim, the same having been by previous decree of this Court adjudged to be prior liens on said proceeds in preference to all other claims, to-wit:

To Dorsey, Brewster & Howell.....$3,500.00
To B. F. Abbott..... 3,500.00

and the balance of other items of costs and expenses, provided for especially in decree of this Court dated 4th June, 1898, to-wit, such balance of costs, fees as may be due to persons heretofore decreed to be entitled to payment out of the fund brought into Court in preference to the bonds and not taxed against the amount of the recovery in favor of Huguley Manufacturing Co. against Galeton Cotton Mills for supplies and findings.

The balance of said fund so paid into Court after said preferred liens and costs and expenses are paid shall be held in the registry of the Court subject to further orders and decree to be made.

The Court reserves the right to make any other and further decree in the premises that may be proper with respect to the disposition of the balance of said fund, after

the payment of the items of fees, aud expenses, as hereinbefore specified.

This October 15th, 1898.

WM. T. NEWMAN,
U. S. Judge.

Filing: Filed in clerk's office 15th day of Oct. 1898.
O. C. FULLER, Clerk.
By J. D. STEWARD, Deputy.

MOTION TO SET ASIDE DECREE OF 15 OCT., 1898.

U. S. Circuit Court for the Northern District of Georgia.

J. J. Robinson, Trustee,
vs. In Equity. No. 360.
Ala. & Ga. Mfg. Co. et al.

The Huguley Manufacturing Company comes now, and moves the Court to open and reconsider the order passed in the above matter on October 15, 1898, and for cause thereof shows as follows:

1. Your petitioner was not represented by counsel on said hearing, and could not be because its counsel on whom it relied, W. R. Hammond, was actually engaged in the trial of a case in the Superior Court of Fulton County when said matter was heard, and said order was passed, and was not and could not be presented at the hearing of the same,

2. Because said order recites in the body of it, as a conclusion and finding of the Court, that the Huguley Mfg. Co. has failed to obtain any decree in the cause which could be operative as against the property, under the provisions of the decree, when the truth is said Huguley Mfg. Co. had obtained and was entitled to an order fixing a lien on said property for the amount of its recovery for supplies and findings.

3. Because said order fails to provide any means or method by which the recovery of the Huguley Mfg. Co. for the amount found in its favor for supplies and findings can be collected, and fails to require the same to be paid into court.

4. Because it orders $7000.00 to be paid to counsel for the Galeton Cotton Mills, as fees, out of the fund ultimately liable for whatever amount may be awarded to the Huguly Mfg. Co., and recites that said claim for attorneys fees has priority over the claim of the Huguley Mfg. Co. for rents and profits.

5. Because in many other respects said order shows on its face face that it was improvidently granted on the ex parte application of counsel for only one side.

W. R. HAMMOND,
Movant's Attorney.

Order:

On considering the the foregoing petition, it is ordered that the Galeton Cotton Mills or its counsel show cause before me on the 12th day of November, 1898, why the prayer of the petition should not be granted. Let a copy be served on opposing counsel.

This November 5, 1898.

WM. T. NEWMAN, U. S. Judge.

Service:

Service of a copy of the foregoing petition and order is hereby acknowledged. November 10, 1898.

B. F. ABBOTT,
P. H. BREWSTER,
Counsel for Galeton Cotton Mills.

Filing:

Filed in clerk's office Nov. 11, 1898.

O. C. FULLER, Clerk.

ANSWER TO MOTION TO SET ASIDE DECREE OF 15 OCT. 1898.

U. S. Circuit Court for the Northern Dist of Ga.

J. J. Robinson, Trustee,
vs. No. 360. In Equity.
Alabama & Georgia Manufacturing Co., et al.

And now come J. J. Robinson, Trustee, and the Galeton Cotton Mills, and answer said motion as follows:

1. On the morning of the 15th of October, 1898, Judge W. R. Hammond informed B. F. Abbott, Esq., one of the counsel for respondent, that he, Hammond, was engaged in the superior court and would be for about an hour of the session, that he desired said Abbott to check the matter of passing on the decree in the U. S. Circuit Court, in above stated matter, as he Hammond, had promised Judge Chilton to see the form of the decree before it was signed. Said Abbott told said Hammond, as counsel for the Huguley Co. that he would so check the matter for an hour. P. H. Brewster and said Abbott were in said U. S. Circuit Court at the opening, and said Abbott stated to the Court the conversation that he had had with said Hammond as attorney for the Huguley Mfg. Co. Said Abbott and Brewster remained in Court until after 12 o'clock, when said Abbott telephoned said Hammond at the Superior Court to know when he would be in the U. S. Court. Said Hammond replied that he could not tell exactly, and repeated to said Abbott that his promise was to see the form of the decree, and asked said Abbott to send the decree over to the Superior Court, and he would read it. Said Abbott stated to the Court the message he had received, and he took the decree in person to Judge Hammond, and he, Hammond, read it. And the only suggestion that said Hammond made was that the time allowed the purchaser for paying in the money on his purchase was too long, and requested said Abbott to state to the Court that view which said Abbott did.

The Court signed the decree just as it was prepared with the exception that the decree provides for the money to be paid into the registry of the Court instead of into the hand of S. C. Dunlap, Esq., the special commissioner, as in the original draft.

Said Hammond asked no further postponement on account of his engagements and said Abbott understood said Hammond to acquiesce in the decree as being the judgment which the Court would render as the result of the hearing of said matter theretofore had in open Court.

2. Respondents deny that the Huguley Co. has ever obtained any decree which could be operative against said property sold by the commissioner for the reason that the

mortgage debt, principal and interest, was and is largely in excess of the net proceeds of said sale and the amount of rents and profits, and the amount of damages for property converted in the aggregate.

3. Respondents deny that the decree fails to provide any means by which the special finding in favor of the Huguley Mfg. Co. for supplies and findings converted shall be paid, but on the contrary the decree provides that all claims of every kind and description in favor of said Huguley Mfg. Co. shall be transferred to said fund in Court.

4. This Court decreed that on June 4th, 1898, that the attorneys fees of Dorsey, Brewster & Howell, and B. F. Abbott, Esq., were and are a prior lien on the proceeds of the property of the Ala. & Ga. Mfg. Co., and said decree of Oct. 15th, 1898, reaffirms said former decree, and directs that said counsel fees be paid, which is according to the practice and the law in such cases.

And having fully answered, respondents pray said motion be denied, and that the costs of the same be taxed against the Huguley Mfg. Co.

DORSEY, BREWSTER & HOWELL, and
B. F. ABBOTT,
Solicitors for Respondents.

United States of America, }
Nor. Dist. Ga. }

Appeared B. F. Abbott before me, the testing officer, and makes oaths that the statements of fact contained in the first paragraph of the foregoing answer are true.

B. F. ABBOTT.

Sworn to and subscribed before me Nov. 12, 1898.

GEO. S. BARNARD,
Deputy Clerk U. S. Cir. Court.

Filing: Filed in clerk's office Nov. 12th, 1898.

O. C. Fuller, Clerk.

ORDER MODIFYING DECREE OF 15 OCT., 1898.

In the Circuit Court of the United States for the Northern District of Georgia.

J. J. Robinson, Trustee,
vs.
Alabama & Georgia Mfg, Co.

Motion of Huguley Manufacturing to Modify Order of October 15, 1898.

Upon consideration of the foregoing petition and answer thereto, it is ordered that the decree of October 15, 1898, be and the same hereby amended and modified as follows:

By adding after these words: "and it further appearing that the said Huguley Manufacturing Company had failed to obtain any decree in the cause which could be operative as against the property under the provisions of said decree," these words: "except as to the amount found in favor of the Huguley Manufacturing Company for supplies and findings which are hereinafter provided for." And amending said decree further by inserting in said order after the words: "B. F. Abbott $3500," and the words "and the balance of other items," these words: "and to the Huguley Manufacturing Company the sum, which, by the decree of June 4th, 1898, was decreed in favor of said company for supplies and findings and interest therein provided, less the sum charged in said decree upon said fund as costs and expenses."

Done in open Court, this November 12th, 1898.

WM. T. NEWMAN, U. S. Judge.

Filing: Filed in clerk's office 12th day of Nov., 1898.
O. C. FULLER, Clerk.

PETITION FOR APPEAL.

In the Circuit Court of the United States for the Northern District of Georgia.

The Huguley Manufacturing Company, and William T. Huguley, and the Alabama & Georgia Manufacturing Company, Appellants,

vs. In Equity.

The Galeton Cotton Mills and J. J. Robinson, Trustee, etc

Intervention by the Huguley Mfg. Co., for Accounting for Rents and Profits. Reference to Master, etc.

Appeal to United States Circuit Court of Appeals for the Fifth Circuit, at New Orleans, La.

The Huguley Manufacturing Company and the Alabama & Georgia Manufacturing Company, defendants in the orginal bill in the above entitled cause, and interveners in the petition filed in the said cause, praying for an accounting for rents, issues and profits, etc., conceiving themselves aggrieved by the orders and decrees entered in the said cause, on to-wit: the 28th day of February, 1898, 4th day of June, 1898, and on the 15th day of October, 1898, do hereby appeal from the said orders and decrees, to the United States Circuit Court of Appeals for the Fifth Circuit, at New Orleans, La., and they pray that this, their appeal, may be allowed, and that a transcript of the record and proceedings and papers, upon which the said order and decree were made, duly authenticated, may be sent to the United States Circuit Court of Appeals, for the Fifth Circuit, at New Orleans, La.

And the said appellants also pray, that certain original books and papers, which are more particularly identified and described in the affidavits of Wm. R. Hammond, and John M. Chilton, and Wm. T. Huguley, herewith filed, be also transmitted to the said Court of Appeals, for the Fifth Circuit, at New Orleans, La., for the inspection of the said Court, for the reasons assigned in the said affidavits.

JOHN M. CHILTON,
W. R. HAMMOND,
Sols. for the Huguley Mfg. Co. et al.,
Appellants.

ORDER ALLOWING APPEAL.

It is ordered that the foregoing petition for appeal be allowed, counsel for appellees objecting to its being allowed as to the decree of Feby. 28, 1898, on the ground that it was rendered more than six months before this petition for appeal, and to the decree of Oct. 15, 1898, on the ground that appellants have accepted the fruit of the decree.

Dec. 2, 1898. WM. T. NEWMAN, U. S. Judge.

Service: Due and legal service of a copy of the foregoing petition and order is hereby acknowledged.

Dec. 2, 1898. B. F. ABBOTT,
P. H. BREWSTER,
Solicitors for Appellees.

Filing: Filed in clerk's office Dec. 3, 1898.
O. C. FULLER, Clerk.

ASSIGNMENT OF ERRORS.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

THE HUGULEY MANUFACTURING COMPANY, AND WILLIAM T. HUGULEY, AND THE ALABAMA AND GEORGIA MANUFACTURING COMPANY, APPELLANTS,

versus

THE GALETON COTTON MILLS, AND J. J. ROBINSON, TRUSTEE, ETC.

IN EQUITY.

INTERVENTION BY THE HUGULEY MANUFACTURING COMPANY, FOR ACCOUNTING FOR RENTS AND PROFITS, REFERENCE TO MASTER, ETC.

Appeal to United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, La.

The Huguley Manufacturing Company and William T. Huguley, and the Alabama and Georgia Manufacturing Company, having prayed and taken an appeal in the above entitled cause, now jointly and severally assign the the following errors:

I. The Court erred in the decree of the 25th of June, 1896, in overruling the objection incorporated in the answer filed by the Huguley Manufacturing Company to the rule to show cause why the sale of the 6th of May, 1896, should not be confirmed, and in confirming the said sale in advance of an ascertainment of the results of the reference then pending before the special master, T. B. Felder, Jr.

II. The Court erred in the decree of the2 5th day of June, 1896, in confirming the said sale in advance of a compliance of the purchasers with the terms of the said sale of the 6th day of May, 1896, said decree affirmatively showing that the terms of the sale had not been complied with.

III. The Court erred in confirming the report of the special master in this:

That the said report discloses on its fact that said master did not himself examine into the proper receipts and disbursements incident to the custody and operation of the mortgaged property, as required by the decretal order of reference, and that no such examination was made by any other person at the instance of or under the direction of the special master:

IV. The Court erred in confirming the said report of the special master in this:

That said master failed to compel the accounting respondents to file their accounts as provided by the 79th Rule of Equity Practice.

V. The Court erred in confirming the report of the special master in this:

That the master, in making the said report, ignored the 76th Rule of Equity Practice.

VI. The Court erred in overruling exception No. 1 filed to the report of the special master in this:

That said report discloses on its face that the special master adopted as the rule of liability on the part of the respondent, the accounting party (designated in said exception No. 1, and hereinafter referred to, for convenience, as "The Galeton Cotton Mills"), during the time of its occupancy and possession of the property in dispute, that it was chargeable only with the profits "actually earned," or which would have been earned but for its "wilful default."

Whereas, the true rule of liability, as appellants insisted then, and now insist, was that the appellee, the Galeton Cotton Mills, was liable to account to the Huguley Manufacturing Company for such profits as would have been earned by the exercise of "ordinary and reasonable diligence" on its part.

VII. The Court erred in overruling exception No. 4 to the report of the special master.

The master was in error in holding and finding that the amount of "interest," charged by the officers and agents of the Galeton Cotton Mills against the corporation, under the general charge of "Balance Interest on Account," being $17,196.24, should be reduced to only $14,021.27, and allowing the last named sum to stand as a charge against the Galeton Cotton Mills in favor of their agent and treasurer, Horace S. Sears, and thus operate as a charge against appellant in the accounting between it and the Galeton Cotton Mills. Appellant claiming and contending that no evidence was furnished to the master on which he could allow the same, and that the only interest charge which could properly be allowed was "interest on working capital," which, the evidence showed, would not exceed $30,000 principal, and that

the interest on this sum at 7 per cent. would be only $7700 for the period of accounting.

Appellant contends that an additional amount should have been allowed in its favor against the Galeton Cotton Mills, on this account, of $6321.47.

VIII. The Court erred in overruling Exception No. 5 to the report of the special master:

The master was in error in holding and finding that the charges for interest on "Datings," contained in the account sales, rendered by N. Boynton & Co. to the Galeton Cotton Mills, to-wit: to the amount of $14,108.35, was the proper charge in favor of the Galeton Cotton Mills against appellant. Appellant contends that this amount so charged should not have been allowed, nor any part of it, and that the whole amount of it should have been added to the amount found in favor of appellant, the Huguley Manufacturing Company, against the Galeton Cotton Mills.

IX. The Court erred in overruling Exception No. 6 to the report of the special master:

The master was in error in finding and holding that there was no excess of "commission" charged by N. Boynton & Co., the sales agents of the Galeton Cotton Mills, on account of sales of duck and other products of the mills, said charge having been five per cent. (5 per ct.) on the gross sales, or $30,626.19 in the aggregate.

Whereas, appellant contends that no more than 3½ per cent. should have been allowed as a credit to the Galeton Cotton Mills on account of said sales, or the gross sum of $21,438.33, which would make an additional amount of $9187.88 that should have been found by the special master in favor of appellant against the Galeton Cotton Mills.

X. The Court erred in overruling Exception No. 7 to the report of the special master:

The master was in error in holding and finding that no amount should be allowed to appellant against the Galeton

Cotton Mills, on account of "shortage on cotton," or the difference in the amount of cotton bought and paid for by the Galeton Cotton Mills, and the amount actually opened and consumed by the mills, as shown by their own books, said amount being as follows:

Actual lbs. of cotton bought and paid for.....	5,408,341
Actual lbs. of cotton opened and consumed...	5,283,028
Difference or balance unaccounted for, lbs.	125,313

Appellant contends that there was no evidence showing that this cotton was accounted for, and that the special master should have found in his favor, against the said Galeton Cotton Mills, the value of the same at 8¼ cents per pound, or $10,338.32 in the aggregate.

XI. The Court erred in overruling Exception No. 8 to the report of the special master:

The master was in error in finding and holding that the valuation of $33,737.28, credited by the Galeton Cotton Mills for the goods on hand at the end of the period of accounting, was correct valuation, and that no additional charge should be made against the Galeton Cotton Mills, in favor of appellant on this account.

Appellant claims and contends that the evidence shows clearly that the market value of the goods on hand at the end of the period of accounting was as follows:

On hand April 30, 1896, cotton duck, 273,050 pounds. Of which in Boston (freight prepaid) 117,832 lbs. 12½.....	$14,729 00
Of which, in West Point, Ga., 155,219 lbs. 12½	19,402 25
Freight prepaid to Boston, on former lot....	707 00
Additional value of converted goods.....	850 00
Goods at mill, unbaled, 1691 lbs. 12½.....	211 37
Cotton at mill, in process, 10,000 lbs. 12½..	1,250 00
Other stock (cotton) waste, etc., 24,207 lbs. 2c.....	484 14
Total net value, as per testimony.....	$37,633 76
Deduct valuation, as per Lanier's estimate....	33,737 28

Leaving a net balance or deficit, on this account of.....$3,896 48

which should have been charged in favor of appellant against the Galeton Cotton Mills, in addition to the amount allowed, to-wit: $33,737.28.

XII. The Court erred in overruling Exception, No. 20 to the report of the special master:

The master was in error, in holding and finding that no amount should be allowed in favor of the appellant, the Huguley Manufacturing Company, against the Galeton Cotton Mills, on account of "Overcharge on Cotton," bought and charged against the Galeton Cotton Mills by W. C. and L. Lanier. Appellant claiming and contending that the special master should have allowed, on this account, the sum of $50,359.52.

W. T. NEWMAN,
United States Judge.

XIII. The Court erred in overruling Exception, No. 10 (a) to the report of the special master:

The master was in error in holding and finding that appellant should have shown the amount and date of each purchase made by the Galeton Cotton Mills, and the market prices of cotton on those days, when it was a matter entirely and exclusively within the knowledge of the Galeton Cotton Mills, and of its officers and agents, to show the amount and date of each of these purchases; and when appellant had shown the dates when they were charged, and had shown, by abundant evidence, the market prices on those days.

XIV. The Court erred in overruling exception No. 11 to the report of the special master:

The master was in error in holding and finding that there was no liability on the part of the Galeton Cotton Mills to the Huguley Manufacturing Company, appellant, on account of its failure to sell the duck manufactured by the mill at the full "market price" of the same. The

evidence showing, as appellants then contended, and now contend, that the cotton duck was sold at an amount less than its market value, in a large sum, to-wit: $96.641.23.

XV. The Court erred in overruling the 14th ground of exception to the report of the special master:

Appellants then contended, and now contend, that the special master erred in admitting and using, as original evidence, the "account sales" made by N. Boynton & Co. to the Galeton Cotton Mills, and in using the same as being a correct report of sales, made by N. Boynton & Co., of the product of the mill, "the testimony not having been sufficient," as appellant contended, and now contends, to show that these accounts of sales were correct, or that they showed correctly the receipts and disbursements made by N. Boynton & Co. on account of the sale of the product of the mills during the period of accounting.

Counsel for appellant, the Huguley Manufacturing Company, did not object to these accounts of sales going in evidence, showing, in connection with the testimony of L. Lanier, the amounts of money actually paid by N. Boynton & Co. to the Galeton Cotton Mills, but did object to their being used by the master, as correctly showing the amounts actually received for the mill products by N. Boynton & Co., there having been no sufficient nor independent evidence, as counsel for appellant contended, and now contends, that they correctly represent the actual and proper receipts and disbursements on that account.

The Court erred in overruling exception No. 12 to the report of the special master, in this:

The master was in error in respect to his use of the "Journal" and "Ledger," under the circumstances stated in said twelfth exception, said circumstances being as follows:

Counsel for appellant, when they were first offered, objected to the admission in evidence of the books of the

Galeton Cotton Mills, to-wit: the Journal and Ledger, on the grounds that they had not been shown to be the original books, or books of original entry of the mills, and appellant offered evidence that they were too fresh to have been original books, and had no check marks upon them as such books of original entry, in daily use, commonly have. The books were at first ruled in by the master. Afterward counsel for appellant, the Huguley Manufacturing Company, offered further evidence, and showed that the "water marks" on the paper, of which the books were made, bore the date of "1894" imprinted on the face of same; whereas, the entries on the books purported to have commenced in "1892" and appellant renewed its motion to exclude the books on the introduction of this new evidence. But, nevertheless, the master, in making up his report, has used and relied upon these books, and has had them audited (in parts) by A. L. Waldo, the expert accountant, employed by him, and has based his report upon the contents of these books.

Appellant contended, and now still contends, that these books should not have been used or considered by the master, at all, in making up his report, but that the report should have been made up from the other evidence that was before the master, excluding from consideration, entirely, these books.

XVII. The Court erred in overruling the thirteenth ground of exception to the report of the special master:

Appellant then contended and now contends, that the special master erred in admitting over the objection of counsel for the appellant, the Huguley Manufacturing Company, the testimony of L. Lanier, that the Galeton Cotton Mills, during the period of its operation, from the sixth day of September, 1892, to the sixth day of May, 1896, made a "net loss" of $4654.60; the objection to said testimony being that it was the result of a calculation made by a person or persons other than the witness, or

any witness, from the books of the mills, and that th books were the best evidence of their contents, and of any loss or profit made or sustained by the mills.

Said evidence was as follows:

Q. "I will get you to state to the Court the exact financial result of the operation of this mill for three years and a half; the period it was operated by the Galeton Cotton Mills, from the first sale to the last?

A. "The stock we had on hand the thirtieth day of April, 1896, was sustained at 11½ cents per pound, and that leaves a loss in the operations of the mill, for that time, of $4654.60. We estimated the goods on hand, and got that result."

Q. (By the master.) "For what period of time?

A. "From September 19, 1892, to April 30, 1896.

Q. "That covers the entire period?

A. "Yes, sir.

Q. "That was a loss?

A. "Yes, sir. $4654.60."

(Record p. 1362.)

Q. "This result is arrived at by you taking from the results of figures made by others?

A. "Yes, sir."

(Record, p. 1441.)

The books having been excluded by the master as evidence, this testimony, showing the result of a calculation or estimate "profit or loss," as based on receipts and expenditures as shown by these books, should have been excluded from evidence, and should not have been used by the master in making up his report, as correctly representing the result of the operation of said mill during the period of accounting.

Counsel for appellant claimed then, and claim now, that this was a fundamental error that vitiates the entire finding of the master, and that he should have been directed by the Court to reconsider the evidence and submit a new

report in the case, excluding from consideration entirely the books which were excluded by him.

XVIII. The Court erred in the decree appealed from, dated the fourth day of June, 1898, in applying to the payment of the alleged deficiency on the mortgage debt so much of the amount which, on confirmation of the report of the special master, had been ascertained to be due as "rents and profits" in favor of the Huguley Manufacturing Company. Such application deprived the Huguley Manufacturing Company of its property, without due process of law, and was thus violative of the Fifth Amendment of the Constitution of the United States.

XIX. The Court erred in said decree of the fourth day of June, 1898, in this:

The amount of the rents, issues and profits ascertained to be due and owing to the said Huguley Manufacturing Company, by the decree of the twenty-third day of February, 1898, confirming the master's report, and in which the sum of $36,210.99 was ascertained to be so due in favor of appellant, was the property of the Huguley Manufacturing Company, and no part thereof could be lawfully applied to the mortgage indebtedness due by the Alabama and Georgia Manufacturing Company.

XX. The Court erred in said decree of the fourth day of June, 1898, in granting the petition of the Galeton Cotton Mills to apply the amount found in favor of the Huguley Manufacturing Company to the balance due by the Alabama and Georgia Manufacturing Company on the foreclosure decree, or the deficiency thereof; because, the Huguley Manufacturing Company was not liable for, and never assumed to pay any part of the indebtedness secured by the mortgage foreclosed in this cause. And the Court erred in applying its property to the payment of any part of the said debt.

XXI. The Court erred in granting said petition of the Galeton Cotton Mills, because the indebtedness by the

Galeton Cotton Mills to the Huguley Manufacturing Company, for rents and profits, and the debt of the Alabama and Georgia Manufacturing Company to the bondholders, were owing in different rights, and could not, therefore, be set off the one against the other.

XXII. The Court erred in applying to said alleged deficiency decree the said debt due by the Galeton Cotton Mills in favor of the Huguley Manufacturing Company for rents and profits, in this;

That no deficiency decree, and no judgment or decree for said alleged deficiency, had ever been rendered.

XXIII. The Court erred in said decree of the fourth day of June, 1898, in applying the said debt for rents and profits due and owing to the Huguley Manufacturing Company by the said Galeton Cotton Mills, to said alleged deficiency, in this:

That no proceeding had ever been instituted in this cause for the purpose of ascertaining what deficiency, if any, existed, after crediting the amount for which the property was sold.

XXIV. The Court erred in the decree of the 4th day of June, 1898, in applying the said rents and profits, as aforesaid, in this:

That there had not been, prior to the said decree of the 4th day of June, 1898, any confirmation of sale of the said property, the only decree in that respect, namely, the decree of the 25th day of June, 1898, disclosing on its face that the purchasers had not then complied with the terms of said sale. And there was, subsequently, down to the rendition of said decree of the 4th day of June, 1898, no evidence of any such compliance.

The petition of L. Lanier, filed on the —— day of October, 1898, disclosed that the terms of the said sale (of the 6th day of May, 1896), had not been complied with, when the decree of the 4th day of June, 1898, was made and entered.

XXV. The Court erred in the decree of the 4th day of June, 1898, in applying said rents and profits, ascertained to be due and owing in favor of the Huguley Manufacturing Company, to said alleged deficiency, in this:

That neither of the appellants had its day in Court in any proceeding instituted for the purpose of judicially ascertaining the existence and amount of any such alleged deficiency. And the ascertainment in said decree of the 4th day of June, 1898, of said alleged deficiency was without due process of law, and violative of the Fifth Amendment of the Constitution of the United States.

XXVI. The Court erred in the decree of the 4th day June, 1898, in applying the said rents and profits, due and owing to the Huguley Manufacturing Company, to the said mortgage debt, in this:

That neither in the bill, nor in any other proceeding, had the bondholders or their trustee or trustees ever intercepted or ever attempted to intercept the said rents and profits, or to condemn them to their mortgage debt.

XXVII. The Court erred in the decree of the 4th day of June, 1898, in applying the said rents and profits to the said alleged deficiency, in this:

That, by the sale of the mortgaged property, the lien of the mortgage, as security, was exhausted, and any balance was for a mere money demand, enforceable only by execution, when properly reduced to a decree for a deficiency.

As mortgagees, neither said bondholders nor their trustee had any lien nor any right to any rents and profits theretofore earned, or for which any person might be liable to account to the mortgagor or its assignee.

XXVIII. The Court erred in the decree of the 4th day of June, 1898, in applying the said rents and profits, ascertained in favor of the Huguley Manufacturing Company, to the said mortgage debt of the Alabama and Georgia Manufacturing Company, in this:

The bill and subsequent proceedings in this cause show that the debt secured by the mortgage foreclosed and the mortgage itself constitute contracts governed by the laws of Georgia; that long prior to and down to the date of the execution of the said mortgage and the creation of the debt secured thereby, it had been and was the law, and had become, first, by the decisions of the Supreme Court of the State of Georgia, and next, by statutory enactment of the Legislature of the State of Georgia, a "rule of property" that a mortgage constituted only a lien upon the mortgaged property, passing no title; and that the mortgagee, in no event, could become entitled to the rents and profits of the mortgaged property.

And the said law was, at the time of the said decree of the 4th day of June, 1898, and still is the law of the State of Georgia.

XXIX. The Court erred in the decree of the 4th day of June, 1898, in making the said application of the rents and profits due and owing to the Huguley Manufacturing Company, to the said mortgage debt, in this:

That to apply the said rents and profits to the payment of any part of the mortgage debt, would be to impair the obligation of the contract between the Alabama and Georgia Manufacturing Company and Robinson, Yancey and Huguley, trustees, and others, evidenced by the said mortgage and the bonds and coupons secured thereby, for this:

That the bill and subsequent proceedings in this cause show that the debt secured by the mortgage foreclosed and the mortgage itself constitute contracts governed by the laws of Georgia; that long prior to and down to the date of the execution of the said mortgage and the creation of the debt secured thereby, it had been and was the law of the State of Georgia, and had become, first, by the decisions of the Supreme Court of the State of Georgia, and next, by statutory enactment of the Legis-

lature of the State of Georgia, a "rule of property" that a mortgage constituted only a lien upon the mortgaged property, passing no title, and that a mortgagee, in no event, was or could become entitled to the rents and profits of the mortgaged property.

And the said law was, at the date of the said decree of the 4th day of June, 1898, and still is the law of the State of Georgia.

XXX. The Court erred in the decree of the 4th day of June, 1898, in overruling the objections interposed by the Huguley Manufacturing Company to the granting of the motion wherein and whereby it was sought to apply the said rents and profits, which had been ascertained to be due in favor of the Huguley Manufacturing Company to the said alleged deficiency due on the mortgage debt.

XXXI. The Court erred in the said decree of the 4th day of June, 1898, in that:

It included, as a part of the said deficiency, that portion of the mortgage debt, in respect to which no default had been made at the time of the filing of the bill, and with respect to which the Court expressly declined to grant a foreclosure as set forth in the second and seventh paragraphs of the decree filed April 1, 1895 (see second printed Rec., pp. 280–9).

XXXII. The Court erred in its decree of the 4th day of June, 1898, in fixing the amount of said alleged deficiency in this:

That the said decree of foreclosure filed on the 1st day of April, 1895, under the second paragraph, provided as follows, to-wit:

Par. 2. "The Court finds, that after said default had occurred, as above, but before the filing of this suit, the holders of forty (40) bonds in number accepted the interest on the said bonds, and by the acceptance of said interest they waived the default, and the principal of said bonds, amounting to the aggregate sum of $20,000, was

not due and payable at the date of filing this suit, and that said trust deed can not be foreclosed for said amount of said forty bonds."

Again, it was also provided in the seventh paragraph of the said decree as follows:

Par. 7. "It is further ordered and decreed that the remainder of said bonds, to-wit: forty in number, which are numbers as set out in paragraph 2 of this decree, for the aggregate sum of $20,000, and for the sum of $3451.24, interest thereon to November 1, 1894, were not due at the time of filing this suit, and said plaintiff, as trustee, is not entitled to recover therefor."

By the 9th paragraph of the said decree, the said mortgage was foreclosed, and a sale ordered, for the sum of $45,000, principal, (that being all of the mortgage debt then due), and for $17,005.92, interest thereon, "with all accruing interest, at 8 per cent., as in this decree adjudged to be due."

It appears, that on the 6th day of May, 1896, said mortgaged property was sold under this said decree, and brought the sum of $66,000. Applying the said sum of $45,000, principal, and $17,205.92, interest, with interest on these said two sums at 8 per cent. per annum, left remaining due upon said debt, for which said mortgage was foreclosed, a sum very much less than the alleged deficiency, ascertained to be due by the decree of the 4th day of June, 1898, the said balance or difference being, to-wit: $3446.60.

XXXIII. The Court erred in the decree of the 4th day of June, 1898, in deducting from the amount awarded for rents and profits, etc., in favor of the Huguley Manufacturing Company, the following items, to-wit:

(a) The balance costs of this cause.....	$182 00
(b) The fees of Julius L. Brown, Special Master	375 00

(c) The fees of D. O. Smith, Stenographer (in part)	675 00
(d) The fees of T. B. Felder, Special Master (in full)	2,500 00
(e) The fees of A. L. Waldo, Accountant (in full)	200 00
Total	$3,932 00
(f) And in deducting from item of "supplies and findings," as "proper share of costs taxable against said Huguley Manufacturing Company," (special)	750 00
P. 19. Total taxed against the Huguley Manufacturing Company	$4,682 00

And in allowing (under the head of "As between the bondholders themselves)" "solicitor's fees," as shown under subdivisions (a) and (b) of Par. 5, of said decree of the 4th day of June, 1898, as follows:

(a) Dorsey, Brewster & Howell		$1,000 00
Abbott & Smith		1,000 00
N. D. Denson		600 00
Total		$2,600 00
(b) Dorsey, Brewster & Howell	$4,000 00	
B. F. Abbott	4,000 00	
	$8,000 00	
The foregoing fees to Dorsey, Brewster & Howell, and B. F. Abbott, being credited in said decree by $500, previously paid each, to-wit:	$1,000 00—	$7,000 00
Total "solicitors' fees" under above head		$9,600 00

And in allowing, under the same head, *i. e.*, "As between the bondholders themselves," Par. 5 (a), the respective items of "expense," etc., as follows, to-wit:

(a) A. E. Buck, Special Commissioner	$400 00	
(b) Advertising.....	250 00	
(c) Court costs, clerk's fees, taking depositions, etc	350 00	
		$1,000 50
Total expenses of reference, solicitors' fees, Court costs, etc., as above set out....		$16,282 50

And appellant assigns as error each of the said items, as detailed above, under this assignment (No. XXXIII), as if each had been made the subject of a separate assignment.

XXXIV. The Court erred in overruling the petition of Hammond, Chilton, Fort and Reed, solicitors, and in which the Huguley Manufacturing Company also joined, praying to be allowed compensation or fees for bringing into court the fund adjudged in favor of the Huguley Manufacturing Company.

XXXV. The Court erred in overruling the motion of the Huguley Manufacturing Company, filed the eighteenth day of April, 1898, in and by which it was sought to correct the decree by allowing the Huguley Manufacturing Company interest upon the sundry items awarded to it, as of a "mean date" between the date of the first sale, to-wit: the sixth day of September, 1892, and the date of the last sale, to-wit: the sixth day of May, 1896, the said "mean date" being August 1, 1894, as explained in the said motion.

XXXVI. The Court in sustaining the exception interposed by the Galeton Cotton Mills in respect to the item of "insurance," allowed to the Huguley Manufacturing Company against the Galeton Cotton Mills by the special master in his report.

XXXVII. The Court erred in the decree, signed the fifteenth day of October, 1898, in modifying the decree of confirmation of the sale of the property with respect to

the provision, fixing a lien on said property in favor of the Huguley Manufacturing Company as to any amount it might ultimately be decreed to be entitled to, and in setting aside said provisions of the decree of confirmation, and decreeing that whatever rights the Huguley Manufacturing Company might thereafter be adjudged to have, should be transferred to the net proceeds of the sale of the property, to be paid into the registry of the Court.

The decree was error, because it took away from the Huguley Manufacturing Company a right which had been previously fixed and vested by the decree of confirmation, and because it diminished the security for the payment of the final recovery of the Huguley Manufacturing Company, the Court having directed, in said decree of the fifteenth day of October, 1898, that large sums of money should be paid out of said proceeds, after it should be paid into Court, preferably to the claim of the Huguley Manufacturing Company.

XXXVIII. The Court erred in said decree of the fifteenth day of October, 1898, in directing the Clerk of said Court to pay out of said fund, when it should be paid to him, the attorney's fees of Dorsey, Brewster & Howell, and B. F. Abbott, amounting to $7000, because if it were proper to transfer the lien of appellant to the fund, the fund should remain intact until the lien of appellant should be satisfied as to whatever amount shall finally be adjudged in its favor.

XXXIX. The Court erred in this:

That prior to the final decree of foreclosure it had been determined by the decree of the Court that the Huguley Manufacturing Company was entitled to the rents and profits of the mortgaged property from the time the bondholders went into possession. But it was decreed that possession should not be restored, nor an accounting had of such rents and profits unless and until the Huguley Manufacturing Company should pay into Court the sum

of $10,000 which, it was alleged, the bondholders had paid in at the first foreclosure sale; that, from said term of said decision, an appeal was taken to the Court of Appeals, and by the said Court, the decree, which adjudged the Huguley Manufacturing Company entitled to the rents and profits. That, thereupon, and in conformity with the opinion rendered by the said Court of Appeals, said Circuit Court ordered that a reference be had to ascertain the amount of rents and profits due to the said Huguley Manufacturing Company. That, while said reference was pending and before the coming in of the master's report, the property was sold for the amount of the mortgage debt ascertained to be due: that subsequently the master reported in favor of the Huguley Manufacturing Company a large sum, to-wit: $39,713.51, which, on exception, was reduced to $36,210.99, and this sum was applied by the Court to the alleged deficiency on the mortgage debt. That, in thus applying said sum which (though undetermined at the time of the sale) was then adjudged to belong to the Huguley Manufacturing Company, after the said decree of foreclosure, if it could be so legally applied, the said Huguley Manufacturing Company and the said Alabama and Georgia Manufacturing Company were deprived of the right within some short time after the decree of foreclosure to pay the sum really due and owing upon said mortgage debt.

XL. The Circuit Court erred in this:

That, at the time of the sale under the last decree of foreclosure, a reference was pending under a decree theretofore made, directing a master to ascertain the sum due the Huguley Manufacturing Company for rents and profits, etc.; wherefore, said sale was made and the purchaser thereat became the purchaser, subject to all rights which the said Huguley Manufacturing Company should, after the holding of the said reference, and as the result of the findings upon said reference, be adjudged to have,

together with all remedies for the enforcement of those rights; and by the action of the Court in applying said sum so found to the payment of said deficiency, said Circuit Court deprived said Huguley Manufacturing Company of its priority, which resulted from the fact that said sale was made pending said reference.

XLI. The Court erred in the decree of the 15th day of October, 1898, in directing that all of the sum of $10,000, alleged to have been paid in by the bondholders, under the first decree of foreclosure, should be deducted from the purchase of $66,000, in this:

That a large part of said $10,000, to-wit: $5897.50, was used in paying a dividend, predicated on the amount bid, treated as cash, on two bonds of $500 each, belonging to D. Jannopoulo, and on twelve bonds of $500 each, owned by Mrs. Sallie Huguley, who declined to join in the purchase, which bonds were proved up for the whole amount, and now constitute a port of the sum for which the mortgage was foreclosed. The right of the bondholders, who bought said fourteen bonds, to a dividend out of the proceeds of the last sale on amount invested, is not only expressly recognized in said decree of the 4th day of June, 1898, but it is provided in the eighth paragraph of said decree, as follows, to-wit:

Par. 8. "In making distribution, any bonds on which a percentage has been paid in cash to former holders, and credited thereon from money paid into court under the first sale, shall be controlled by the person or persons so paying the money into court, for the purpose of reimbursement of such moneys so paid, and the persons so paying the money shall receive all dividends to which said bonds shall be entitled, until they are reimbursed the amount so credited on said bonds, with interest thereon at 8 per cent. per annum; and the original holders are not entitled to receive any percentage until repayment of the amount received."

To thus permit the amount so paid for on said bonds, with interest, to be deducted from the purchase money bid at the second sale, and yet to direct the payment, with interest, out of the proceeds left after making said deduction, is to pay twice over the sum invested in or paid upon said fourteen bonds, with interest.

XLII. The Court erred in its decree of the 15th day of October, 1898, in deducting from the said purchase money the said sum of $10,000, with interest, for this:

That on the 10th day, of October, 1892, the person or persons who paid said sums into court were reimbursed and repaid by the West Point Manufacturing Company, as shown in the amended answer of the Galeton Cotton Mills, filed to the petition of the Huguley Manufacturing Company for an accounting for rents and profits, on the —— day of June, 1893, and the evidence taken thereon.

To permit said payment now would, if the deduction from the purchase money, complained in the next preceding assignment, be sustained, operate to pay three times over the said $5897.50, invested or paid upon said fourteen bonds.

XLIII. The Court erred by directing in said decree of the fifteenth day of October, 1898, that the said sum of $10,000, and interest, be deducted therefrom, for the purposes therein stated, in this:

That the petition filed by L. Lanier on the —— day of October, 1898, praying a displacement of all liens on said mortgaged property, in order that he might raise the purchase money bid for the property (about two years and a half before), by mortgaging said property, discloses on its face that the person who bid for said property, and to whom the relief was granted on said petition, was not the same person and did not represent the same persons who paid said purchase money into court.

XLIV. The Court erred in the said decree of the fifteenth day of October, 1898, in deducting the said $10,-

000, and interest, from the said purchase money, in this:

That if the persons who paid said money into court were entitled to repayment of the said sum from the appellants, or either of them, the deductions of said sum, and interest, from the purchase money did not absolve these appellants, or either of them, from the paymen thereof, for that, the persons, who paid said sum into court, were not parties to nor represented in the proceedings disclosed by said decree.

XLV. The Court was without jurisdiction to apply an asset, to-wit: the $10,000, and interest, belonging to the person or persons who paid said principal sum into court, and apply it in favor of the said purchasers, as a credit on their bid, without having before it the person or persons who paid the said money into court.

XLVI. The Court erred in deducting from the purchase money, bid at the last sale, a large part, to-wit: the sum of $3375.18, of the $5000 previously paid into court by the last purchasers, for this:

That said sum of $3375.18 represented the following items of "costs" of taking the account of rents and profits before the master, to-wit:

(a) The fees of T. B. Felder, special master (in part).....	$2,500 00
(b) The fees of D. O. Smith, stenographer (in part).....	675 co
(c) The fees of A. L. Waldo, accountant (in full).....	200 00

And, together with $750.00, also forming a part of said $5000.00, and of which $500.00 was by way of compensation paid to the special master, and $250.00 to the stenographer, was payment in full of the sum awarded to the master, to-wit: $3000.00, and in full of the fees of the stenographer, $1000.00, except the sum of $2500.00, and in full of the fees of the accountant, A. L. Waldo, to-wit: $200.00.

It results from the said deduction that the Huguley Manufacturing Company, although successful in obtaining an award upon the said reference, is taxed with the entire compensation of all the officers for services in taking the said account, except $25.00.

XLVII. The Court erred in said decree of the 15th day of October, in this:

Included in said sum of $5000.00, paid into court on the last purchase, and which is deducted from the sum bid at the last sale, is the sum of $750.00, the fees (in part) of the T. B. Felder, special master, and of D. O. Smith, stenographer. And yet said sum was, by decree of the 4th day of June, 1898, deducted from the sum awarded the Huguley Manufacturing Company for "Supplies and Findings."

To deduct the same from the sum bid, also, was to pay said sum twice over.

XLVIII. The Court erred in its decree of the 15th day of October, 1898, in this:

That there should have been paid into court the whole of said bid for the purchase of said property, to-wit, $66,000, as of date May 6, 1896, with interest to date, so paid in accordance to the decree, aggregating for purchase money, principal and interest, $77,515.54, which, together with the special award for supplies and findings and interest ($3658.07) decreed in favor of the Huguley Manufacturing Company, making a total sum of $81,173.61 (less such amount with interest as could be lawfully credited on same). Whereas, the Court, in said decree, required the payment into Court of only the sum bid for the purchase money, less $10,000, and interest thereon, and the $5000, respectively, the two payments made at the first and last sales, aggregating, principal ($48,433.36) and interest $8665.18), only $57,098.54 actually paid in.

XLIX. The Court erred in said decree of the fifteenth day of October, 1898, in providing that the Huguley

Manufacturing Company should have no lien upon the property for its ultimate recovery in said cause, in this:

That, aside from the sum due for "Supplies and Findings" (for the payment of which provision was made in the said decree), there was no sum (consistently with the then existing decree of the Court, which had applied the sum awarded for rents and profits to the payment of the balance of the mortgage debt), due and owing to the Huguley Manufacturing Company; wherefore, said provison that said company should have no lien for its ultimate recovery could only apply to such recovery as might be awarded to the Court of Appeals, or under its direction, on a reversal of the decrees of the Circuit Court; and this, said Circuit Court was without jurisdiction to provide against.

L. The Court erred in its decree of the fifteenth day of October, 1898, in granting to L. Lanier, or to L. Lanier and associates, the relief prayed in their petition, filed on the - day of October, 1898, on the following grounds, in addition to those already assigned, and each ground is assigned as error:

(*a*) It appears, that about two years and five months had elapsed from the date of the said sale to the filing of the said petition, and that in the meantime the Huguley Manufacturing Company was kept out of the possession of the mortgaged property, from which they had been unlawfully dispossessed under the former decree of foreclosure, which had been reversed; that said L. Lanier, or L. Lanier and associates, should have been compelled to respond for the value of the use and occupation of the said property as condition to the displacement in favor of himself, or of himself and associates, of the lien which the Huguley Manufacturing Company had or might afterward be adjudged to have upon the property, or any other right or equity of the Huguley Manufacturing Company.

LI. (*b*) The Court erred in the said decree of the 15th day of October, 1898, in this:

That it accorded to the said L. Lanier, or to L. Lanier and associates, valuable rights and privileges, which were not offered to him or others by the terms of the decree of foreclosure, in this:

That, by the said decree of foreclosure, the said sale was for cash, (in money or bonds); whereas, by said decree of the 15th day of October, 1898, he was given a credit of two years and six months, and further, that by the terms of the said decree of foreclosure, properly construed, the mortgagor nor its successor in interest could be deprived by the purchasers of the possession of the said property until the purchase money was paid, and they should become entitled to a deed.

And yet, by said decree of the 15th day of October, 1898, said purchasers are relieved of all liability for said deprivation of possession.

LII. (*c*) Said purchasers, for two years and six months, had failed to notify the Court of the fact of their non-compliance with the terms of the said sale, or of any excuse for their non-compliance: wherefore, instead of granting to said L. Lanier, or L. Lanier and associates, purchasers, additional time, in which to raise the purchase money, and removing liens and incumbrances for this purpose, said sale should have been set aside, and said purchaser or purchasers made to account for all damages resulting to any person, including those resulting to the mortgagor or assignee, from being deprived of the use of the said property.

LIII. (*d*) The Court erred in its decree of the 15th day of October, 1898, in this:

That in and by the said decree privileges were granted and the sale confirmed to persons other than those who bid at said sale.

LIV. (*e*) The decree of the 15th of October, 1898, is wanting in validity, in this:

That prior to the confirmation it changed the terms of sale.

LV. (*f*) It is shown by the record that a motion was made by L. Lanier, trustee, as purchaser, to confirm said sale in June ———, 1896, and a confirmation was resisted by the Huguley Manufacturing Company on the ground, amongst others, of the pendency of said reference, and because the master had not then reported; but notwithstanding such resistance said purchasers insisted upon the confirmation of the said sale.

And yet, in said petition, filed by Lanier, in October, 1898, the fact of the pendency of said reference, and that the master had not reported, were alleged as a reason why the terms of sale had not been complied with.

The Court erred in holding said excuse to be a valid one, as it did in granting relief on said petition.

Appellants insist that if the pendency of said reference and absence of a report were not a valid ground why the sale should not be confirmed, it is not a valid excuse for failing to comply with its terms, and that the Court, therefore, erred either in overruling the said objections to confirmation or in holding said excuse to be valid.

LVI. Said decrees of the 4th of June, 1898, and of the 15th day of October, 1898, are erroneus in that same are not in conformity with the mandate of the United States Circuit Court of Appeals on its decision of this cause under former appeals.

Acknowledgement of Service.

Due and legal service of the within Assignments of Errors, and a copy of the same, is hereby acknowledged, and all and further services and notice waived. This Dec. 2, 1898.

B. F. ABBOTT,
P. H. BREWSTER,
Sols. for Appellee.

Filing: Filed in Clerk's Office 3rd day of Dec., 1898.
O. C. FULLER, Clerk.

BOND.

Know all men by these presents, that we, the Alabama & Georgia Manufacturing Company, Huguley Manufacturing Company, and W. T. Huguley, as principals, and C. M. Curran and Jacob Hass, as sureties, are held and firmly bound unto J. J. Robinson, trustee, and the Galeton Cotton Mills, in the full and just sum of two hundred and fifty dollars, to be paid to the said J. J. Robinson, trustee, and the Galeton Cotton Mills, their certain attorney, executor, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 2nd day of December, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas, lately, at a term of the United States Circuit Court for the Northern District of Georgia, on the 4th day of June, 1898, in a suit pending in said Court, between the Huguley Manufacturing Company, as intervener, or petitioner, and the Galeton Cotton Mills, as respondent, a decree was rendered against the said Huguley Manufacturing Co., the Alabama & Georgia Manufacturing Company and W. T. Huguley; and the said Huguley Manufacturing Co., Alabama & Georgia Manufacturing Co., and W. T. Huguley, having obtained said decree and files a copy thereof in the clerk's office of the said Court, to reverse the said decree in the aforesaid suit, and a citation directed to the said J. J. Robinson, trustee, and Galeton Cotton Mills, citing and admonishing them to be and appear before the United States Court of Appeals for the fifth circuit to be holden at New Orleans, La., within thirty days from the date thereof.

Now the condition of the above obligation is such that if the said Huguley Manufacturing Company, Alabama & Georgia Manufacturing Company, and W. T. Huguley, shall prosecute said appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void: else to remain in full force and virtue.

THE HUGULEY MANUFACTURING CO.,
By WM. T. HUGULEY, Agt. and Atty. [Seal]

THE ALABAMA & GEORGIA MFG. CO.,
By WM. T. HUGULEY, Prest., [Seal]
WM. T. HUGULEY, [Seal]
C. M. CURRAN, Surety. [Seal]
JACOB HAAS, Surety. [Seal]

Sealed and delivered in presence of
O. C. FULLER, as to Principal.

Approved by WM. T. NEWMAN,
U. S. Judge.

United States of America, }
State of Georgia, Fulton County. }

In person appeared before the undersigned, attesting officer, C. M. Curran, who, after being duly sworn, deposes and says, that he signed the within and foregoing bond as surety, and deponent further says that he is worth the sum of two hundred and fifty dollars above all his debts and liabilities, and above all homesteadstnad exemptions allowed to him by law.

C. M. CURRAN.

Sworn to and subscribed before me this Dec. 2d, 1898.
CHARLES HERMANN,
(Seal of N. P.) Notary Public, Fulton Co. Ga.

Filing: Filed in Clerk's Office Dec. 3, 1898.
O. C. FULLER, Clerk.

HUGULEY MANUFACTURING CO. et al. vs. GALETON COTTON MILLS ET AL.

Circuit Court of Appeals, Fifth Circuit, May 16, 1899.

No. 798.

Appeal from the Circuit Court of the United States for the Northern District of Georgia.

W. R. Hammond and John M. Chilton for appellant.

B. F. Abbott and P. H. Brewster for appellee.

Before Pardee, McCormick and Shelby, Circuit Judges.

SHELBY, Circuit Judge. On January 1, 1884, the Alabama and Georgia Manufacturing Company executed a mortgage or deed of trust to J. J. Robinson and two others to secure $65,000 of bonds issued by it that day.

Subsequently the property embraced in the mortgage was sold under a decree of a State court, subject to the mortgage. Under this sale the Huguley Manufacturing Company became the purchaser and owner of the property, subject to the incumbrance of the mortgage for $65,000. It was placed in possession of the property. A bill was filed in the Circuit Court of the United States for the Northern District of Georgia to foreclose the mortgage, a decree of foreclosure rendered, and on appeal to this Court the decree was reversed (13 U. S. App. 359, 6 C. C. A. 79, and 56 Fed. 690). The decree of foreclosure being vacated by reversal, the Circuit Court granted a petition on the part of the Huguley Manufacturing Company to restore it to the possession of the property, upon condition, however, that it pay into court $10,000, which had been paid by the purchasers under the now vacated foreclosure sale. This condition the Huguley Manufacturing Company did not comply with, but resisted. It took another appeal to this Court, and the decree of the Circuit Court was affirmed (30 U. S. App. 683, 19 C. C. A. 152, and 72 Fed. 708).

At the first foreclosure sale the property was purchased for the bondholders, who organized a corporation under the name of the Galeton Cotton Mills. This corporation was placed in possession of the property under the first decree of foreclosure, and held the same pending the appeal, and after the reversal of the decree, and upon the second foreclosure became purchasers again, and have remained continuously in possession, operating the mills on the property. The Galeton Cotton Mills were in possession of the property under the first decree of foreclosure for a period of three years and eight months. The real controversy in the present litigation is about the rents of the property during this period. The net rents have been ascertained to be $28,334. At the last foreclosure sale the balance was left due, after applying the net purchase

money to the mortgage debt of $33,414.21. The Huguley Manufacturing Company contends that the possession of the purchasers at the foreclosure sale, the decree afterward being reversed, was illegal and wrongful, and that in stating the account of reference, the company was not to be treated as a mortgagee in possession, but that a stricter rule should be applied on the accounting, and that the rents are the property of the Huguley Manufactnring Company, and should be paid to it. The Galeton Mills, on the contrary, contend that its possession was not tortious, but legal, that it should be treated and charged only on the accounting as a mortgagee in possession, and that the net rents should not be paid to the Huguley Manufacturing Company, but should be applied to the payment of this amount left unpaid on the mortgage. These are the tonly substantial questions in the case. The material assignments of error relate either to the statement of the account before the master, or the application of the rents to the payment of the mortgage debt. We are relieved from stating these questions and the facts relating to them more minutely by the opinion of the learned judge who rendered the decrees appealed from in the Circuit Court (89 Fed. 218-231).

1. The possession of the purchasers at the first foreclosure sale was not wrongful in the sense that such possession made them trespassers. The decree was rendered by a court having jurisdiction of the case. The mortgage foreclosed was valid. The decree was binding, and not subject to collateral attack. It was valid and effectual to place the purchasers in possession, and to protect them in possession till it was reversed. 2. Jones, Mortg. (5th Ed.), 1587, 1588.

It was reversed by this Court, and the Circuit Court then granted an order of restitution, but upon condition that the Huguley Manufacturing Company would pay into court the sum of $10,000, which had been paid by the purchasers at

the date of their purchase. This Court, on appeal, affirmed this condition. The Huguley Manufacturing Company did not pay the $10,000, and so were not entitled to the possession by the terms of the order made by the Circuit Court and affirmed by this Court. From its inception the possession in question was sanctioned by a decree of the Court having jurisdiction of the parties and the property. The reversal of the decree does not made the purchasers under it trespassers. The purchasers in this case, on the facts stated, are entitled to the benefit of the equitable rules governing mortgagees in possession, and the account should be stated and the rents applied by such rules. Dutcher vs. Hobby, 86 Ga. 198: 12 S. E. 356: Brobst vs. Brock, 10 Wall. 519: Lane vs. Holmes, 55 Minn. 379: 57 N. W. 132: Townshend vs. Thompson, 139 N. Y. 152, 34 N. E. 891.

2. Under the English law, which has been substantially adopted in many of the States, a mortgage on real estate is of dual nature. In a court of law the mortgagee is regarded as the owner. He possesses the legal title, and can recover the estate in ejectment. In a court of equity the mortgage is deemed only a security for the debt described in it (Welsh vs. Phillips, 54 Ala. 309: 3 Pom. Eq. Jur. 1184: 1 Jones, Mort., 4th Ed. 11). In Georgia, as in several of the States, the English view does not prevail. The legal title does not pass to the mortgagee. The mortgage, both at law and in equity, is always deemed a mere security for debt. This was settled in Georgia many years ago by judicial decision (Davis vs. Anderson, 1 Ga. 176: Vason vs. Ball, 56 Ga. 269). It is now confirmed by statute. "A mortgage in this State is only security for a debt, and passes no title" (Civ. Code Ga. 2723). In the argument of this case it was urged with much earnestness that these decisions and the statute are controlling in this case, and that their proper application to the case will give to the

appellant the rents and profits of the property. It must be conceded as established by authority, as a general principle, that a mortgagee in possession, whether in person, by trustee, or receiver, is in equity accountable for the rents and profits, "and must apply them to the reduction of the mortgage debt." 2 Jones, Mortg. (5th Ed.), 1114. This is a matter exclusively of equity jurisdiction, and is for the benefit of the mortgagor. By such application of the rents his debt is paid or reduced so as to lessen the burden of redemption. It is also nothing more than is due to the mortgagee. He is entitled to be paid. In cases where the corpus of the property is not sufficient to pay the debt, and where the mortgagor is insolvent, the mortgagee has no other means of obtaining full payment except to secure the rents. As between an insolvent mortgagor and a mortgagee who has collected rents, the property mortgaged being insufficient to pay the debt, the rents must be applied to extinguish the debt. The mortgagee would not, in equity, be permitted to retain the rents and not apply them to the debt. In no jurisdiction would he be required to pay the rents to the mortgagor, his debtor, and leave the debt unpaid. As a mortgagor, under such circumstances, could not prevent the rents being applied to the payment of his debt, he can not, by selling his equity of redemption to another, invest him with a right that he did not have himself. The purchaser of the mortgagor's right of redemption can have no greater rights than the mortgagor. In cases like this the equitable right of the mortgagee to apply the rents to the payment of his claim seems undisputed by the general practice and principles of equity and jurisprudence. This, we understand, if not conceded by the appellant, is not denied, but the contention is that these principles are not applicable to a mortgage controlled by the laws of Georgia. Is there anything in the Georgia law in conflict with these principles? Does the statute which makes a mortgage

only a security for a debt, intend to make it any less a security, in equity, than other mortgages on the real estate? Under the English rule, a mortgage on real estate is in equity always regarded as a mere security for debt. It is only at law that the mortgagee is regarded as the owner of the legal title. The Georgia statute changes the effect, in this regard, of a mortgage at law, but it is only a legislative recognition of the equitable rule, which views a mortgage as merely a security for debt. It is held in Hart vs. Respess, 89 Ga. 87, 14 S. E. 910, as stated in the syllabus:

"While the mortgagee has no legal title to the rents and profits, he has an equitable claim upon the same in so far as they may be needed to discharge so much of the mortgage debt as can not be realized out of the corpus of the property, the facts of the case indicating that the debtors are insolvent, and the creditors likely to sustain loss."

The decree of the Circuit Court is affirmed.

EXTRACT FROM TRANSCRIPT OF RECORD, VOL. 3 (TYPEWRITTEN AND UNPRINTED).

Old Nos. pp. 1353–1354.
New Nos. pp. 1569–1570.

TESTIMONY OF L. LANIER, taken Feb. 16th, 1897.

(Direct Examination by P. H. Brewster.)

Q. We put in a book yesterday that contains all of those, where is that book?

A. There are the books; they are on two books there.

Q. Which one of those contains all the matter you have sworn contained on the vouchers that you have stated were correct?

A. Those two books, one is the "*Journal*" and the other the "*Ledger*."

Q. Have you checked all that book and know it corresponds with those vouchers?

A. I didn't do it all myself; I hired part of it done.

Q. The vouchers for all those charges are contained in that bundle?

A. Yes, sir.

Judge Hammond: If the witness has not done it, himself, he can't swear to it.

Col. Brewster: We tender the books in evidence.

Judge Hammond: I object to the books being in evidence. It has not been testified that they are correct by the party that kept them.

The Master: If I find that the vouchers have been improperly entered, or column of figures has been wrongfully totalled, I will not consider the books.

Judge Hammond: I object to the books as original evidence.

Col. Brewster: I insist that they go as original evidence.

Judge Hammond: I make the point, they are not admissible as original evidence, because the foundation for the books has not been properly laid. The evidence does not show that the entries on the books are correct.

The Master: I think they are admissible, since they bring the original vouchers and tender them along with the books, I think that makes it original evidence.

Judge Hammond excepts to the ruling.

Examination by Judge Hammond.

Q. Mr. Lanier, do those books contain all the vouchers, all the entries from all those vouchers, of your own knowledge?

A. I have not checked all of them; I have not gone over all the items.

Q. You have not rechecked them all?

A. Not all of them.

Q. How many have you checked?

A. Some of the first, perhaps a year and a half of them.

Q. Out of that period of time?

A. The first of the operations of that Mill?

Q. A year and a half out of the period of three years and eight months?

A. Yes, sir.

Q. Do they contain anything else except what is in those vouchers?

Do those books contain any other entries except what is in those vouchers?

A. They contain credits for the sales of the goods.

Q. What I want to ask you is this, did they contain anything in addition to the things you testified about, the Account Sales, the credits and dates from those vouchers? they contain nothing else but those?

A. No, sir.

No. 1355–1371.

Judge Hammond: I object to the books as original evidence, on the ground that they are not sufficiently shown to be correct.

The Master: As the books are accompanied by those other papers, as an earnest of their correctness, I will admit them.

(By Col. Brewster.)

Q. These papers contain your disbursements?

A. They do, yes, sir.

Q. They contain all that has been paid out?

A. Yes, sir.

Q. Where is the original evidence of your receipts?

A. Those Account Sales.

Q. What are they?

A. The Account Sales made by our selling agents; the accounts rendered by the selling agents of the goods sold for each month; by the month; they are made out by the month.

Q. Does that cover the whole period of time?

A. That covers up to the first of January, 1896.

Q. Who was your Selling Agent?

A. N. Boynton & Co.

(By Judge Hammond.)

Q. Do the books cover the whole time?

A. Yes, sir.

Q. These books come up to the first of January; the Account Sales come up to the first of January?

A. Yes, sir; the other accounts sales will be forthcoming.

Col. Brewster: We tender these books in evidence.

(By Judge Hammond).

By Judge Hammond:

Q. (By Judge Hammond) These are acconnts sales rendered you by your selling agents?

A. Yes, sir; N. Boynton & Co., Boston.

Q. Those are papers sent you by your selling agents in Boston, and you don't know whether they are correct, except that you know those accounts cover all goods sent you by your selling agents?

A. Yes, sir.

Q. But whether they are correct or not, you don't know?

A. In what way?

Q. You don't know whether the prices of those accounts sales are the real prices received for the goods?

A. They were satisfactory prices, the prices given.

Q. Were they the market prices?

A. Yes, sir.

Q. The full market prices for those goods?

A. I considered they were.

Q. Do you know that of your own knowledge?

A. Well, yes.

Q. You say, "Well, Yes," why do you hesitate?

A. I don't sell any goods myself.

Q. Therefore, you don't know, of your own knowledge, about it; you depend upon others for your information about it?

A. I depend upon others for the market.

Q. Who did you get your information from?

A. From different periodicals and the prices made by people.

Q. Did you keep up with them yourself or is there some other man connected with it who does?

A. It is my business.

Q. It is your business to keep up with the sales and prices?

A. Yes, sir.

Q. You get them from the market reports?

A. Yes, sir.

Q. You can't say, from your own knowledge, that those prices correspond with the market reports?

A. For that grade of goods?

Q. Did you examine these reports to see if they would correspond, check them with the market reports?

A. I didn't do that each time; no, sir.

Q. I wanted to know whether you made it your habit to do that or not? I want to know whether you were careful or not each time to see whether they had obtained the market prices?

A. I go over the lists of accounts sales carefully.

Q. I understand you go over them and see that they brought so much, but can you say these accounts sales show that those sales were made at the market prices?

A. Yes, the prices were satisfactory to me at the time they were made.

Q. You stated that once, but you can't say they were the market prices?

The Master: Suppose those were not the market prices, and suppose that during the entire period covered by these transactions, his agents stole from him, and he really got less than he ought to have gotten, but through no fault of his, would that render the evidence admissible?

Judge Hammond: I don't admit they are correct.

Q. (By Col. Brewster): You sold your goods and that is an account of the sales?

A. Yes, sir.

Q. (By Judge Hammond): Those are accounts sales of N. Boynton & Co.?

A. Yes, sir.

Q. They are co-defendants in the original case by virtue of their being owners of stock in the West Point Manufacturing Company?

A. Yes, sir.

Q. How much stock do they own in the West Point Manufacturing Company?

Col. Brewster: I object to this testimony. I will ask how N. Boynton & Co. are regarded in the commercial world?

Judge Hammond: I object to that.

Q. Mr. Lanier, do those papers contain all the money that the Galeton Cotton Mill got for the sale of its product of every kind and character?

A. Yes, sir; unless it was some small sales that were made at the Mill.

Q. Where will those sales appear?

A. On the cash account.

The account sales referred to, and about which the witness was examined, tendered in evidence, and marked with the name of the stenographer, and the date, February 16th, 1897.

* * * * *

The journal and ledger are introduced in evidence by the respondents, and identified by the name of the stenographer and the date, February 16, 1897.

* * * * *

Judge Hammond: We ask that the books be impounded.

The Master: You will turn the books over to the Clerk. (February 17, 1897).

All the books and papers which have been identified were offered in evidence and allowed.

Judge Hammond: I desire to have exception noted to all the rulings against me on the admission of any books and papers.

* * * * *

Judge Hammond: We ask that the Court require the books returned that were taken away.

The Court: Counsel complains that the journal and the ledger have been taken away and ask that they be turned over. I ask that they be turned over to Mr. Seab. Smith, stenographer, to be delivered to Mr. D. O. Smith.

Col. Brewster: They are all here.

May 5, 1897.

EXTRACTS FROM RECORD, VOL. 3, OLD No. P. 1506, NEW No. P. 1720.

(Cross-Examination by Judge Hammond.)

Q. Who kept the books of the Galeton Cotton Mills, Mr. Lanier?

A. Mr. Winston kept the cotton books; Mr. Higginbothem kept the cloth production book; my firm kept the in town, and the treasurer kept his books.

Q. Who was the treasurer?

A. H. S. Sears.

Q. Who made out the account sales?

A. The selling agents.

Q. Who were they?

A. N. Boynton & Co.

Q. What individual made them out, the account sales? Would you know by looking at the accounts?

A. I don't know.

Q. Do you know by looking at the handwriting?

A. No sir; I do not.

Q. Wasn't it H. S. Sears?

A. I don't know; I would say at a guess, it was not him. It don't look like his handwriting.

EXTRACT FROM TESTIMONY OF JAS. S. HAMILTON, EXPERT ACCOUNTANT AND WITNESS FOR MOVANT.

Vol. 3, Old No. p. 1567; New No. p. 1781.

(Direct Examination by Judge Hammond):

Q. what else have you figured on in connection with these books besides what you have stated as to the result of those books?

A. The only thing I could check was cotton; I have checked the cotton.

Those books, there nothing but a Journal and Ledger, there was no pass-book; there was no day-book; there was no book of original entry; no stock book and no cash-book.

Q. Is a Day-Book an essential book?

A. It is absolutely essential.

Q. Can you get at the actual results without a Day-Book?

A. You cannot check a Ledger and Journal without a Day-Book and a Cash-Book to check against. You have nothing to check agaiust.

Q. Do those books constitute a full set of books?

A. They do not.

Q. What else is omitted besides a Day-Book?

A. A Cash-Book, and Stock-Book.

* * * * pp. 1568 (01 p. 1782 New No.)

Q. Those books of N. Boynton & Co., have you examined those books?

A. I did.

Q. I will get you to state whether or not, in your judgment, those are original books of N. Boynton & Co., and if not why would you say not?

A. I should say not.

Q. Why not?

A. Because, there is not a check-mark on them, showing where they have been checked over; nor a check-mark to show where they have checked to get a trial balance, and besides, the books are perfectly clean.

Q. There is no appearance of use on them at all?

A. No, sir.

Q. Could books of that kind be kept without showing use?

A. No, sir; to go over a period of that length of time I should say they could not.

EXTRACT FROM TESTIMONY OF JAS. S. HAMILTON, EXPERT ACCOUNTANT,—WITNESS FOR MOVANT.

(Vol. 3, p. 1577 (Old No.),—p. 1791 (New No.).

(Direct Examination by Judge Hammond):

Q. Compare the handwriting of the Accounts Sales with the handwriting on the books of N. Boynton & Co., or on the Accounts Sales of N. Boynton & Co., with the book that I hand you, and state whether or not they are in the same handwriting?

A. I have examined them, and, with some exceptions, the Accounts Sales are in identically the same handwriting that there is on the books.

Q. On this Journal?

A. Yes, sir.

Q. And the same is true of the Ledger?

A. Yes, sir; the same thing is true.

EXTRACT FROM RECORD, VOL. 3, OF HEARING HAD BEFORE MASTER, JULY 12, 1897.

Old Nos. pp. 1634–1637.
New Nos. pp. 1848–1851.

Judge Hammond:

We want to offer evidence to show that the books offered are not the original books of the Galeton Cotton Mills.

Col. Brewster:

We object to the evidence offered.

The Master:

I will let you introduce such evidence.

J. M. CHILTON, Sworn for movant, testified:

Direct Examination by Judge Hammond:

Q. Did you discover anything from the internal evi-

dence of these books going to show whether or not they are the original books of the Galeton Cotton Mills, commencing in 1892?

A. Yes, sir.

Q. Show the Court the physical evidence in these books and state what it is and exhibit it to the Court?

A. The age of the books as shown by a large part of the paper contained in the bound volume was manufactured after the date of the accounts set out in the book.

Q. What is the date of the manufacture of that book, the date of the paper?

A. The date of the manufacture of the paper that is in it as shown by the water-mark on the pages, these here are 1892 (indicating), and other portions of the same volume are 1894.

Q. Turn to a page that has a water-mark of 1894, and exhibit it?

A. Page 209 and a number of other pages.

Q. Turn to page 209?

A. That is simply one of a number of pages in the same book.

Q. Let us see the water-mark on page 209? (Exhibiting page of book.)

Judge Hammond:

I exhibit to the master the water-mark on page 209 (reading) "Linen Ledger, 1894."

The Witness:

The same water-mark appears on page 211, and on a great many other pages on the same book.

Q. The same water-mark, 1894?

A. Yes, sir.

Q. What is the date of the first entry on that book?

A. September 27th, 1892.

Q. Do you find anything on the other book, the ledger, of similar import?

A. Yes, sir.

Q. Refer to a page of that and give us the water-mark?

A. The water-mark on all paper in this ledger so far as I have investigated it, a large number of the sheets, I know, shows the date of the ledger as 1893, on page 107, for instance, of the ledger, and there are a great number of others.

Q. How did your attention come to be called to the water-mark on the paper of this book?

A. I was examining the book and I happened to notice there was a water-mark, and I put it between the light and saw the date of the manufacture.

Q. You discovered that during the last week?

A. I discovered that last Saturday.

Judge Hammond:

We renew our motion to exclude those books.

Col. Brewster:

We have predicated the book on the fact that there was a voucher to sustain every entry, our case is predicated on the ground that we have produced the original vouchers.

The Master:

I will report under the evidence that they are not the original books of the Galeton Cotton Mills. I will let them come in as memorandum, accompanied by the original vouchers. If the vouchers do not sustain them I will exclude them, I think that will operate to take the books out as original evidence. I would not be authorized to take those books as evidence in the case.

Judge Hammond:

It appears they are not original evidence; they are not the original books, and copies are not admissible: we are entitled to the original books. We have now offered proof showing they can't be the original books of the Galeton Cotton Mills, and the gentlemen ought to bring the original books here. We did not ask for the production of the original books, have never asked for them, and they have not produced the original books.

The Master:

They have tendered a number of original vouchers, the contention is, that the sum and substance of those vouchers are reflected by those books, and are shown by those books, and when I come to make up my report, if there is an entry not corroborated by the original vouchers, I will reject them. I will hold under the evidence that those are not the original books, I think those two books, per se, have no probative value.

Judge Chilton:

I have a motion to make: We move, if the Court please, to exclude the vouchers (accounts of sales) put in evidence as having come from Boynton & Co., selling agents; first on the ground that there is no independent evidence that those vouchers are correct, and second, that no witness has testified to the truth of the facts disclosed by those vouchers.

The Master:

For the present the motion is overruled, I will hear from you in the argument of the main case, and if I am convinced I am in error will reverse my ruling.

EXTRACT FROM TRANSCRIPT OF RECORD, VOL. 3, OLD NO. 1362; NEW NO. 1578.

(Feb. 16, 1897.)

TESTIMONY OF L. LANIER (witness for respondent).

(Direct Examination by P. H. Brewster.)

Q. I will get you to state to the Court the extract financial result of the operations of this mill for three years and a half; the period it was operated by the Galeton Cotton Mills from the first sale to the last?

A. The stock we had on hand on the 30th day of April, 1896, was estimated at 11 1-2 cents per pound, and that leaves a loss in the operation of the mill for that time of $4654.60. We estimated the goods on hand and get that result.

Q. By the Master: For what period of time?

A. From Sept. 19, 1892, to Apl. 30, 1896.

Q. That covers the entire period?

A. Yes, sir.

Q. That was a loss?

A. Yes, sir; $4654.60.

(Direct Examination by P. H. Brewster):

Q. You had some statements you had prepared as to the financial status of the Galeton Cotton Mills, referred to in your last answer, have you got those statements so you can hand them to the court?

A. Yes, sir. (Exhibiting papers.)

Col. Brewster: We tender in evidence these statements.

Q. You answered and gave the figures as to its condition when you were examined heretofore?

A. These (referring to papers exhibited) are more in detail. Here are the statements of receipts and disbursements showing the condition of the company.

Q. What is the first paper, just state so we will understand it?

A. I have compiled the production of the Galeton Cotton Mills.

This (referring to statement) is the production by fortnights of the Galeton Cotton Mills. These sheets I have marked Nos. 1, 2 and 3; they also give the total production.

Q. From what period to period?

A. From the beginning, from our first return made Sept. 30th. We bought the property on the 5th., received the title on the 16th., and this is our first production as returned on Sept. 30th, 1892.

Q. These sheets are numbered how?

A. 1, 2, and 3, and this ends Apl. 30, 1896.

Q. That was after the last sale?

A. Just prior to the last sale.

Q. That wound up the entire period of time?

A. Yes, sir; those sheets are the production of the Galeton Cotton Mills from Sept. 30, 1892, to April 30, 1896.

The papers exhibited and testified about are identified with the name of the stenographer and the date, May 4, 1897, and numbered consecutively, 1, 2 and 3, on the back thereof.

Q. What is that (exhibiting paper)?

A. That is a statement showing the cotton purchased, the aggregate for the same period.

Q. Does it give the price?

A. Yes, sir; the amount and the total dollars and cents.

Q. What period does that cover?

A. The same period.

Q. Is there one or two sheets of that?

A. Only one.

The paper testified about is identified with the name of the stenographer and No. 4, May 4, 1897, written on the back thereof.

Q. What is that paper (exhibiting paper)?

A. That is a sheet showing cotton opened and the production, and cost and sales.

The paper testified about is identified with the name of the stenographer and "No. 5," May 4 '97, written on the back thereof.

Q. What is the next paper? (Exhibiting paper.)

A. This is a statement of the receipts and disbursements of the Galeton Cotton Mills covering the same period.

The paper testified about is identified with the name of the stenographer and " No. 6, May 4 '97, written on the back thereof.

Q. Does that show the financial condition at the close of the administration of the Galeton Cotton Mills about which we are inquiring?

A. Yes, sir.

Q. From the beginning to the end?

A. Yes, sir, from beginning to end.

Q. When you were on the stand months ago you were asked if you ever checked the entire matter to ascertain the correctness, of your own personal knowledge? At that time you said you had checked about a year and a half. I will ask you if you have since checked the remainder?

A. I have since checked it on through.

Q. State to the Court if you have checked the entire business of the concern and know that it is correct?

A. Yes, sir; I have.

Q. You have checked it all?

A. Yes, sir.

Here the witness offers "duplicates" (unsworn and unidentified) for the missing "vouchers" so called, as itemized on pp. 1413-5, old numbers, and 1627-9, new numbers.

Q. Do you not know the amount represented by those absent receipts were paid?

A. Yes, sir; I know they were paid; our books show it.

Judge Hammond: I object to the statement that the "books show it." The best evidence would be the books themselves.

The Master: I sustain the objection and rule out that part of the answer that the books show those facts.

Judge Hammond: I have a further objection, but will make it on the cross-examination.

Q. During the time covered by your testimony, who drew the checks originally!

A. I bought the supplies and findings for this Mill during the entire time, and I paid for them with check on the treasurer of the Company or on W. C. & L. Lanier, who were the bankers for the concern.

Q. You know those items about which you have testified were really paid?

A. Yes, sir; I do. There are 8 items here I have not produced vouchers for, which I can get.

By the Master: Do you know the amounts were paid independent of the vouchers?

A. Yes, sir; I do.

Q. I will ask you whether or not you checked those statements you have testified about; whether or not you checked them all through yourself?

A. Yes, sir; I did.

Q. And they are correct?

A. Yes, sir; they are correct.

Col. Abbott: We offer these statements and offer these duplicate vouchers in evidence, and also ask the privilege of supplying those 5 or 6 missing vouchers as soon as we can get them.

Judge Hammond; I object to the statements because it don't appear that he made them. He says he checked them from the books. If those statements are made by him as an expert, and he has gone through and made them as an expert, they are admissible, otherwise, not. I don't think they have shown that he has done the work, and that it is correct.

The Master: As I understand it, those statements are

condensations of what the books show through a series of years.

Judge Hammond: I object to all those papers because it don't appear that he made them out himself. He says he checked them up.

(By the Master): What do you mean by "checked them up?"

A. I checked the items on the books with the vouchers that we have presented, and I had bought the items that the vouchers covered, and that the books show were paid for.

Q. Do you know anything about books?

A. Yes, sir; I have had to do with books all my life.

Q. Is your experience in going over books and keeping books sufficient to enable you to go over a set of books and see whether they are right or not?

A. Yes, sir; it is.

Col. Abbott: I offer the papers in evidence under that statement.

Cross-Examination by Judge Hammond.

Q. Mr. Lanier, take this first paper introduced, the "Production of the Galeton Cotton Mills, Sheet, No. 1, September, 30th, 1892; you gave there the number of pounds, then the total pounds, and then yards—are those those figures the result of a calculation or the result of just what appears on the books, copy of what appears on the books?

A. That is compiled from the Superintendent's reports put in here in evidence in this cause.

Q. That is not taken from the books but from those detached, separate papers?

A. The superintendent made out his reports; and I compiled it from the reports. He compiled his reports from his books.

Q. Those papers put in as superintendent's reports were taken from the books, and this is taken from those reports?

A. Yes, sir.

Q. Did you make it?

A. This is merely copy of the report which I compiled. I compiled it.

Q. And those are compiled from the superintendent s reports?

A. Yes, sir.

Q. The superintendent's reports show these identical figures.

A. Yes, sir.

Q. Have you checked every one of those items with the superintendent's report item by item?

A. Yes, sir,

Q. Did you put your check-marks on here?

A. I checked it from the other sheets and these are re-checked.

Q. Where did you put your check-marks—on this paper?

A. I checked over the original paper which I made out, every item.

Q. Only those numbers where the check-marks are those that have been checked?

A. All were checked, but this has been re-checked.

Q. Did you check them all, every figure?

A. Yes, sir; originally.

Q. What I am trying to get at, is whether all of those figures were checked by you?

A. This paper was checked by the man who copied this statement. I gave him the sheets that I had compiled from the reports and pay-rolls of the superintendent, which are on file, and he made up this.

Q. Do you mean to say, that this is another man's work, and that you did not check it?

A. I checked the original, but I did not check this to see whether this corresponded with my original paper. This was made up—copied by my book-keeper.

Q. Where is the original where you checked?

A. I have not got it with me.

Q. Where is it?

A. I suppose it is in my office.

Q. Were these copies made from the originals?

A. Yes, sir.

Q. Who made them?

A. Mr. Freeman, our cotton man.

Q. Do you mean the original reports?

A. The original document is the superintendent's report; I made up those papers from the superintendent's reports, then those are more decent copies of the instrument made out by me, but contain exactly the figures as the others.

Q. Who made the original, you?

A. Yes, sir.

Q. You made the original out?

A. Yes, sir.

Q. Yourself?

A. Yes, sir.

Q. This is a copy you made from that?

A. No, sir; I had it made.

Q. Have you compared it, item by item?

A. No, sir; I had the man to take the original and make that from it.

Q. Who did that?

A. Mr. Freeman, those are Mr. Freeman's figures.

The Master: Why not let those papers go in as a memorandum? Just let it be identified and let it go in as a memorandum in the case, and turn it over to Judge Hammond and Mr. Huguley and let them verify it if they desire to do so.

Judge Hammond: I think the figures made by an expert would be original evidence, expert evidence, it is frequently done: I want the expert here who done this work, and want him to testify that it is correct.

Col. Abbott: I want to say this, that the superintendent's reports are in as original evidence, they were sworn to, every one of them, as being correct. We offer these papers in connection with the others in order that some conclusion may be arrived at without taking the balance of human life to do it.

Old No. 1420;
New No. 1634. May 4, 1897.

L. Lanier, resumed the stand, testified:

Discussion was had as to the admissibility of the papers testified to by the witness as having originally been compiled by him and copied by Mr. Freeman.

The Master: There are some books of original entry and some original vouchers that are already in, and Mr. Lanier, as I understand it, abstracted from the books and vouchers certain data which have been verified by him, and I have ruled that they might go in as memoranda and that I would verify it; they would not go in as original evidence.

The Witness: I checked the footings, but the different items making the footings I did not check them.

Q. (By Judge Hammond): Did you make these footings yourself?

A. I made the footings on the original paper.

Q. Did you make them on the copy?

A. I did not, but I checked the footings on the copy and they corresponded with the one I did make.

Q. (By Col. Abbott): Have you compared the footings with the paper you made?

A. Yes, sir; I have.

Q. Did they correspond?

A. They correspond; they agreed; I compared them and they agreed.

The Master: I will let in the papers with the understanding that if it is not admitted to be correct, Mr. Smith and myself will undertake to verify it.

Q. Mr. Lanier, you state this Mill lost a certain amount of money during that entire period, the entire operation; how do you know it lost that much money?

A. The results show it.

Q. The results of the operation of the Mill; is that result calculated from the books?

A. Yes, sir.

Q. Who made that calculation from the books, who went through the books and made that calculation that shows that loss you have testified about?

A. That is made up from the books of the Company.

Q. What individual went through the books and made that calculation?

A. I made it up from the difference realized for the goods, the proceeds of the goods, and the cost of making and marketing them; the cost was that much above the proceeds.

Q. My question was, who was it went through the books

and made the calculation which shows this loss; did you do it?

A. I assisted in it.

Q. Didn't you have it done by somebody else?

A. A good deal of the clerical work is done by other people. I don't do it.

Q. A good deal of the adding and calculating was done by other people?

A. Yes, sir.

Q. You didn't do all the work that was done on those books?

A. No, sir.

Q. You swear to that amount of loss, that it is correct?

A. Yes, sir; and to the best of my knowledge and belief it is.

Q. To the best of your knowledge and belief, you say?

A. Yes, sir.

Q. Do you know it of your own knowledge?

A. I am entirely satisfied with it.

Q. You are satisfied those figures are correctly made by the parties you employed to make them?

A. Yes, sir.

Q. You are satisfied those figures are correct?

Q. You don't state they are correct of your own knowledge, because you made them?

A. They are correct from our receipts and expenditures; the cost of the goods and receipts from goods shows that to be the correct amount of loss.

Q. You did'nt make the calculations from which those figures are made up?

A. The account sales are made up from the sales and the net proceeds are shown on all accounts sales.

Q. Who made up those account sales?

A. The selling agents.

Q. Who set down the figures and made up those figures of those sales?

A. I figured on all of them.

Q. Did you figure them yourself?

A. Yes, sir.

Q. How did you figure it, by taking the figures given you by others?

A. Largely by figures made by others.

Q. Explain what you mean by that?

A. We have to take the Pay-Rolls, Cost of Cotton, Supplies and Findings, incidentals, make up the total cost, and take the proceeds of the goods from the cost. Those figures are made up by others under my supervision.

Q. You have those figures made by others?

A. Yes, sir; most of them are.

Q. You could not devote enough time to do all that?

A. No, I could not make all those figures.

Q. This result is arrived at by you from taking the results of figures made by others?

A. Yes, sir.

Judge Hammond: I move to rule out the testimony of this witness that there was a loss by reason of the operation of this Mill.

The Master: I will let it remain in for the present.

The ruling is excepted to.

Q. (By Col. Brewster): I would like to ask the witness a question right here. Didn't you verify all those figures?

A. Yes, sir: I did.

Q. You say you verified everything; how did you verify it? Did you go over the calculations made by those people to see whether the calculations are correct?

A. It is not so much the calculations as the correctness of the figures showing the cost of the goods and the amount received, the proceeds of the goods.

Q. There had to be additions?

A. Yes, sir: the same as in all business of that magnitude. There had to be a great deal of it.

Q. Did you make all those additions yourself?

A. I either did it or had it done.

Q. Did you do it yourself?

A. Largely I did.

Q. Did you do all of it?

A. Not in every instance. I don't know that I did that. I did it largely myself.

Q. Unless you know those additions are correctly made, you can't state this result is correct, can you? If the men you got to do the work did or did not do it correctly, you would not know that without checking up the work?

A. No, but I may have had some one else to do it and verified it in that way.

Q. Did you do that work yourself?

A. I very often did all that, but at times I may not have done it, and had some one else to do it.

Q. It took a great deal of figuring to get that result?

A. Yes, sir.

Q. How long did it take to do, and how many men did you have employed on that work?

A. There were three or four of us to do the work.

Q. How long did it take three or four of you to do the work?

A. It is brought up daily almost.

Q. In figuring for this testimony to get out this result, for this testimony you figured it out to get the result?

A. I only compiled it.

Q. You made it up for this record?

A. I had the figures already made. They are made as matter of fact every six months. We close our books every six months.

Q. You just took those semi-annual statements and made your statement from them?

A. They are all re-checked when the six months expire. At that time we check them up, and close our books, etc., etc., etc.

* * * * *

EXTRACT EROM TRANSCRIPT OF RECORD, VOL. 3, OLD Nos. pp. 1387-88. NEW Nos. pp. 1600-1.

Judge Hammond: I will give notice of another motion to exclude Mr. Lanier's evidence, on the ground that he used a memorandum which he has not filed.

Col. Brewster; We are going to file it.

Judge Hammond: I ask that it be filed with the stenographer.

The Court: If you will indicate what it is, I will order it filed.

Judge Hammond: The testimony of Mr. Lanier on the 16th day of February. He was examined then, and he gave from a memorandum the amount of cotton consumed from September, 1892, to May, 1896—5,278,429 pounds.

The Court: All that is on file. The stenographer has it down and has the book.

Judge Hammond: I move to rule out the evidence given on that day by Mr. Lanier, on the ground that it was read from the memorandum.

The Court: The motion is overruled.

Judge Hammond: I will ask you to certify that he did testify from the memorandum on that day. It does not appear in evidence that he was testifying from a memorandum: I ask that it appear in the record that he was testifying from a dozen sheets in his hands.

The Court: I do not know what part he testified independently and what part he refreshed himself by memorandum. He gave a good deal of independent evidence.

DUPLICATE OF L. LANIER'S SHEET OR EXHIBIT.

SHOWING THE RECEIPTS AND DISBURSEMENTS AND PROFIT AND LOSS OF THE GALETON COTTON MILLS, FROM SEPTEMBER 19, 1892, TO APRIL 30, 1896.

STATEMENT.

RECEIPTS.	DR.	DISBURSEMENTS.	CR.
Sales	$616,981 81	Cotton	$386,623 95
Stock on hand	33,737 28	Converting	15,783 63
Frt. omitted	443 56	Expense	2,336 07
Error in price of cotton	2,509 24	Freights	21,910 82
	$653,671 89	Insurance	3,502 52
Balance to profit and loss	4,654 60	Pay rolls	100,850 01
	$658,326 49	Salaries	10,846 00
		Cartage	7,448 93
		Taxes	2,273 60
		Supplies and findings and repairs	25,372 94
		Storage	4,493 80
		Discount	5,827 47
		Commissions	30,626 19
		Interest	39,908 56
		Machinery	522 00
			$658,326 49

UNITED STATES CIRCUIT COURT OF APPEALS.

FOR THE FIFTH CIRCUIT.

I, J. M. McKEE, Clerk of the United States Circuit of Appeals for the Fifth Circuit, do hereby certify that the foregoing two hundred and ten pages, numbered from one to two hundred and ten, inclusive, contain a true copy of extracts from the record in the case of The Huguley Manufacturing Co. et als., No. 798, vs. The Galeton Cotton Mills et als., as the same remains upon the files and records of said United States Circuit Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals, at the City of New Orleans, this 6th day of October, A. D. 1899.

.....

Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

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No. 94

Motion

Filed Oct. 15, 1904

United States Circuit Court of Appeals

FIFTH CIRCUIT.

No. 798.

THE HUGULEY MANUFACTURING COMPANY ET AL., APPELLANTS,

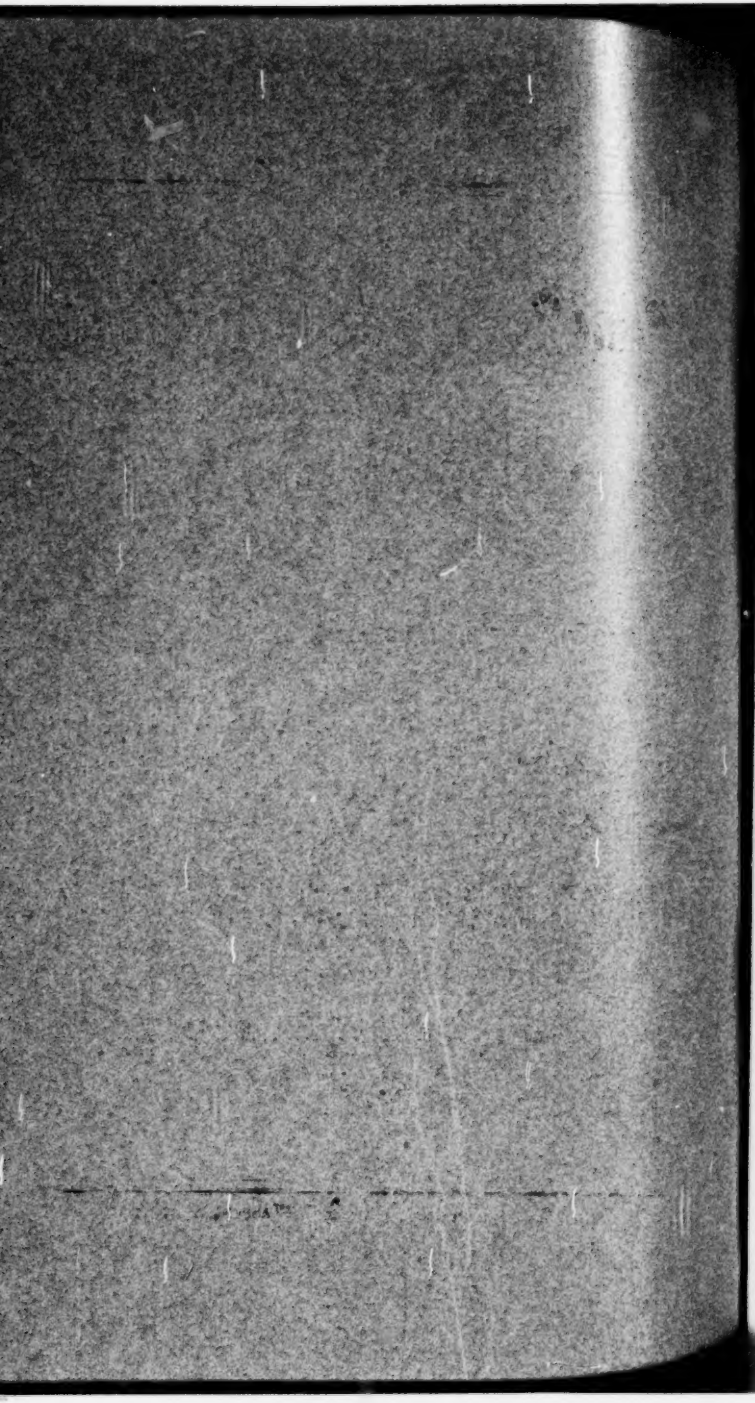
vs.

THE GALETON COTTON MILLS ET AL., APPELLEES.

FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

MOTION TO PAY FOR PRINTING RECORD OUT OF FUND IN COURT.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 868



ED STATES CIRCUIT COURT OF APPEALS,
FIFTH CIRCUIT.

HUGULEY MFG. CO. ET AL., *Appellants*,
vs.
THE GALETON COTTON MILLS, *Appellees*.

appellant in the above-stated cause comes and moves
rt to direct the costs of printing the record in the
ntitled cause, including the clerk's fee for supervising
ne, out of the fund in the registry of the court below,
vn by the record in said cause on file in this court,
ne being the fund in controversy, except the sum of
ndred dollars, which movant expects to be able to
the following grounds, to wit:

Because movant is insolvent and unable to pay the
except as to said $400.00).

Because movant has exhausted every effort to ob-
ney to pay for copying and printing the record, and
y been able to obtain the sum of twelve hundred dol-
ght hundred of which has been expended in having
ord copied and certified to this court, all which is
by the affidavit of W. T. Huguley, herewith filed.

Movant submits as an additional reason why this
should be allowed that through its counsel it has
ed every effort to obtain the consent of counsel for
e to abbreviate the record as sent to this court, and
in a written stipulation to omit certain portions
from the printed record, but without success, all of
s shown by the affidavit of W. R. Hammond, hereto
d.

21, 1899.

Signed)

W. R. HAMMOND,
J. M. CHILTON,
Sol's for Appellants.

—A

UNITED STATES CIRCUIT COURT OF APPEALS,
FIFTH JUDICIAL CIRCUIT.

STATE OF GEORGIA, }
Fulton County. }

THE HUGULEY MANUFACTURING COMPANY, *Appellant,* }
vs.
THE GALETON COTTON MILLS, *Appellee.* }

In person came before the undersigned W. R. Hammond, who, after being duly sworn, deposes and says that he is of counsel for the appellant in the above-stated cause. On the 8th day of November, 1898, deponent called on Mr. B. F. Abbott, of counsel for appellee in said cause, and asked him to consent to an abbreviation of the record and the evidence on appeal to the circuit court of appeals. Deponent found, after a brief conversation with Mr. Abbott, that he was indisposed to make any consent or to allow deponent to do anything to which he would give his attention with a view to abbreviating the evidence.

A few days previous thereto deponent had called on Mr. P. H. Brewster and asked him to enter into an agreement in reference to an abbreviation of the record and the evidence on the appeal, and Mr. Brewster told deponent that he did not have time to consider the matter and declined to go into any negotiations with deponent on the subject whatever. Deponent asked him what he must do, and he referred deponent to Mr. Abbott, his associate, stating that he would abide by any agreement that might be made between his said associate and deponent.

Deponent then, on November 8th, 1898, addressed a letter to Mr. B. F. Abbott, of counsel for appellee, a true copy of which is attached hereto. To this letter deponent received no reply, except a verbal statement from Mr. Abbott that he could not undertake the labor necessary to an abridge-

ment of the record. Deponent afterwards, on December 17th, 1898, addressed a letter to Mr. B. F. Abbott in reference to an abridgement of the record, a true copy of which is hereto attached.

This letter was received by Mr. Abbott, who told deponent verbally subsequently thereto that he had received the same, but that he could not make any consent to the abbreviation suggested. The agreement handed to Mr. Abbott, as stated therein, was not returned to deponent by him. Deponent further says that he made a special request of Mr. Abbott, counsel for appellant, prior to the making up of said record by the clerk, to agree to the omission of all the evidence in the case referring to the physical condition of the property in consideration of the grounds proposed, that no exception should be made to the ruling and decree of the court in refusing the claim of appellant on account of the physical condition of the property. This embraced a large part of the proofs in the cause, and would have been a very material reduction. Deponent proposed to Mr. Abbott to have the record prepared with this part eliminated and submitted to him for his examination, but Mr. Abbott said that this would be too much labor, and that he could not undertake it. Deponent has made every effort in his power to obtain a consent from counsel for appellee in reference to the abbreviation of the record, and has never been able to get them or either of them to agree to any method by which the same might be accomplished.

Deponent attaches hereto a true copy of the agreement handed to Mr. Abbott, accompanying the letter above referred to of December 17, 1898.

Deponent further says that after said record was made up and returned to the court of appeals, to wit, on the 1st day of February, 1899, he addressed a letter to Messrs. B. F. Abbott and P. H. Brewster for the purpose of obtaining from them a stipulation as to the printed record in said cause. A copy of said letter is hereto attached and a copy of the

proposed agreement which accompanied the same. Said agreement was returned to deponent by counsel for appellee without their signature and with a written memorandum thereon signed by them, which is hereto attached.

Deponent is of the opinion that said record could have been materially abbreviated, and fully one-half the cost of copying the same, as well as the cost of printing, could have been saved if deponent could have obtained the co-operation and consent of counsel for appellee in said cause. He is of the opinion that the propositions made by him to counsel for appellee were all reasonable, and might have been complied with without any injury to appellee's side of said cause.

W. R. Hammond.

Sworn to and subscribed before me this the 6th day of February, 1899.

S. D. Harris, [seal.]
N. P., Fulton County, Georgia.

Hammond, Skee (obliterated) Langley, Atlanta, Ga.

November 8, 1898.

Hon. B. F. Abbott, *City.*

Dear Sir: A few days ago I called on Mr. P. H. Brewster, associate counsel with you in the case of "The Huguley Mfg. Co. *vs.* The Galeton Cotton Mills," and asked him to consent to an abbreviation of the record and the evidence on the appeal to the circuit court of appeals. He told me that he did not have time to consider the matter and declined to go into any negotiations on the subject whatever. I asked him what I must do, and he referred me to you, stating that he would abide by any agreement that you and I might make. Feeling confident that I might be able to obtain your co-operation, I called on you today. I found, however, after a brief conversation with you, that you were indisposed to make any consent or to allow me to do any-

thing to which you would give your attention with the view of abbreviating the evidence.

I beg to call your attention to the following language of the circuit court of appeals in the case of "Nashua & Lowell R. Corp. *vs.* Boston & Lowell R. Corp.," in 61st Fed. Rep., p. 245:

"Considering the duty which solicitors and attorneys practicing in the Federal tribunal owe to the courts and to each other, it is to be expected that ordinarily the clerk will receive joint directions with reference to facilitating and simplifying the transcript on appeal."

As I understand you, in our interview today you were unwilling to consent to any abbreviation whatever of the transcript in this case. I desire again to make the request of you that you consent to take up the matter with me of abbreviating the transcript of the record. The evidence is very voluminous, covering nearly 1,700 pages of typewritten matter, the same being the stenographer's report. This report contains a great deal that is not evidence, as, for instance, the statements of the stenographer that the court met on certain days and giving the names of counsel for plaintiff and defendant that were present; also objections made by counsel to evidence, giving in many places the remarks of counsel, and giving also the language of the master in sustaining or overruling the objections. There is also a great deal of the stenographer's report that is not evidence proper. For instance, a question would be asked and objected to, and the master would sustain the objection. Such matter as this ought to be eliminated from the record by consent of counsel.

We have a number of sets of interrogatories that were asked witnesses, as expected, in which the questions propounded to different witnesses are identical. We desire a stipulation from you that these questions need not be copied but once in the record. The answers of the witnesses can be made just as intelligible by copying the questions once as by copying them a dozen times. In the testimony as re-

ported by the stenographer there are a great many repetitions. Sometimes questions are asked and answered in almost identically the same language twice. There ought to be some way in which we might agree that mere repetitions, either in questions or answers, might be omitted.

I am willing on my part to do the labor necessary to curtail this record, and request that you give me such co-operation as your duty to the court, to say nothing of your duty to opposing counsel, would prompt. It seems to be the opinion of the court of appeals that it is the duty of counsel on both sides of the cause to aid the court in the abbreviation of records as much as possible. I am willing to undertake the labor of boiling this evidence down and stating the substance of it in much briefer form than it is stated in the stenographer's report if you will join me in good faith and examine this work after I have done it with the view to giving it your consent if it shall be properly done.

I make this request of you for the purpose of conforming to the views of the court of appeals as expressed by them in a number of cases reported, where they indicate in strong terms that they think counsel on both sides of the cause should co-operate for the purpose of abbreviating the record.

As I understand you today, you were utterly unwilling to undertake the labor of making an examination of the abbreviated statement of the record, and were unwilling to consent that anything might be eliminated so as to make the record short and compendious, as it should be before the court of appeals.

Hoping to hear from you favorably in this regard, and that you will be willing to co-operate with me in endeavoring to accomplish this result, I am,

Yours truly,

(Signed) W. R. Hammond.

FEBRUARY 1, 1899.

Messrs. B. F. ABBOTT and P. H. BREWSTER, *City.*

GENTLEMEN: Enclosed I hand you a written stipulation as to the omission of certain parts of the record in the case of The Huguley Mfg. Co. *vs.* The Galeton Cotton Mills, appellee in the U. S. circuit court of appeals for the fifth circuit, from the printed record. Of course, our object is to get rid of the expense of printing these portions of the record which have been made up and already transmitted by the clerk. I respectfully request your attention to this matter and an early reply. If you cannot consent to the omission of all of these items from the printed record, please be kind enough to return the paper to me, indicating what portions you are willing to consent to omit. If you decline to consent to the omission of any of these papers, please return this paper to me with your refusal endorsed on the same in writing. I will thank you very much to sign the consent. I would add that all of these books and papers have been very carefully prepared in the neatest and most intelligible manner by Mr. Brown, and that none of us will find any difficulty in readily and fully understanding all of his figures.

Awaiting your early reply, I beg to remain,

Yours most truly,

W. R. HAMMOND,
Of Counsel for Appellant.

U. S. CIRCUIT COURT OF APPEALS, FIFTH JUDICIAL CIRCUIT.

THE HUGULEY MANUFACTURING COMPANY, *Appellant*,
vs.
THE GALETON MILLS, *Appellee*.

It is hereby stipulated and agreed between counsel for appellant and appellee in the above-stated case that the following portions of the record in said cause be not printed, to wit:

1. Forty-three monthly and quarterly reports, from December, 1892, to December, 1895, of the superintendent of the Galeton Cotton Mills.
2. One hundred and sixty-six pages of account sales of N. Boynton & Company.
3. The inventory made by Higgenbotham & Brown.
4. The journal of the Galeton Cotton Mills.
5. The ledger of the Galeton Cotton Mills.
6. The cotton books of the Galeton Cotton Mills.
7. The cotton books of Atkinson & Turner.
8. The cotton books of J. T. Zachry.

Each party to this agreement reserves the right to make such reference to any of said portions of the record, and to use the same, and to quote from the same in briefs and arguments as they may deem proper, just as if the same had been printed.

This February —, 1899.

J. M. CHILTON,
W. R. HAMMOND,
Attorneys for Appellants.

——— ———,
Attorneys for Appellee.

As we understand the law, the appeal will be heard and determined on the record, and we do not understand that

anything will be a part of the record in the court of appeals except such as is copied and certified by the clerk as such. The documentary evidence mentioned in the foregoing stipulation is in large part the documentary evidence offered by Galeton Cotton Mills and Robinson, trustee, in support of their defense. This being so, of course we decline to consent to the above stipulation.

This 2nd Feb., 1899.

DORSEY, BREWSTER & HOWELL,
B. F. ABBOTT,
Counsel for Galeton Cotton Mills.

Counsel for appellee cannot agree to the above and foregoing prepared stipulation. The defense set up before the master consisted in large part of the evidence contained in the books and papers mentioned above. We are clearly of opinion that it should be printed in order that the court of appeals may have it in convenient form and in compliance with the rules, as we understand it.

Feb. 6, 1899.

DORSEY, BREWSTER & HOWELL,
B. F. ABBOTT,
Att'ys for Appellee.

DEC. 17, 1901.*

Hon. B. F. ABBOTT, *City.*

DEAR SIR: Enclosed I hand you agreement in reference to copying of the cotton books of the Galeton Cotton Mills and of Atkinson & Turner, which I request you to sign and return to me. This will abbreviate the record very much, and I hope you can see your way clear to complying with our request in this regard. I have just examined these books, and they show the purchase of a large number of bales on many different days, the weight of each bale being given separately. I think you will agree with me that it is unnec-

* NOTE.—The date of the foregoing letter is evidently incorrect.

essary to set down the weight of these separate bales, and that it will only be necessary to give the aggregate number of pounds for each day. The books also show the aggregate amount of money paid for each day, and this, of course, will show the price per pound.

Awaiting your reply, I beg to remain,

Yours truly,

W. R. HAMMOND.

UNITED STATES CIRCUIT COURT OF APPEALS.

J. J. ROBINSON, *Trustee*,
vs.
ALABAMA & GEORGIA MANUFACTURING COMPANY ET AL.

It is agreed between counsel for appellant and appellee that the clerk of the United States circuit court, in copying the books of the Galeton Cotton Mills and in copying the cotton books of Atkinson & Turner, introduced in evidence in the above-stated cause, may make a statement of the aggregate number of pounds of cotton purchased each day and the aggregate price paid for the same, as shown by said books on each day, omitting the separate weights of each bale and the names of the parties from whom they were bought, and also the marks and numbers of the bales.

——— ———,
Counsel for Appellants.

——— ———,
Counsel for Appellee.

U. S. CIRCUIT COURT OF APPEALS, FIFTH JUDICIAL CIRCUIT.

THE HUGULEY MFG. CO., *Appellant*,
vs.
GALETON COTTON MILLS, *Appellee*.

STATE OF LOUISIANA,
Parish ——.

In person comes before the undersigned W. T. Huguley, who, after being duly sworn, deposes and says:

That he has been personally conducting the litigation in the above-stated case for the Huguley Mfg. Co. ever since its first beginning. He holds authority from D. Jannappoulo, the president of the company, to do so, and it is through the efforts of deponent alone that the litigation has thus far been carried on.

Deponent is the largest stockholder in the Huguley Mfg. Co. and more interested than any one else.

Deponent says that he has drawn upon his own private means to conduct the litigation in the above-stated case until he has exhausted them. He has used every effort and every means in his power to procure money for the purpose of paying the expenses of copying and certifying the record and of printing the same in the above case, and he has no means whatever of paying for the printing of the record in this court. Deponent has made his calculations to be able to get the record to this court and have the same printed out of the funds that he expected to be able to control, but he was calculating on obtaining a consent from the counsel on the other side to abbreviate the record, which consent he failed to obtain. It has practically exhausted his resources to have the long record copied and certified to this court. Deponent expects to be able to get $400.00 more, besides what has been already obtained by him, which can be used for

the printing of the record as far as it will go. He states positively that this is absolutely all the money that he will be able to procure for that purpose.

This money has not yet been paid, but he has the promise of it and hopes to be able to get it. Deponent further says that the Huguley Mfg. Co. is absolutely insolvent and has long since been out of business and has no means whatever with which to pay any costs or expenses, except such money as it may be able to recover in the present case. Said Huguley Mfg. Co. has become insolvent by reason of the result of this foreclosure proceeding.

(Signed) WM. T. HUGULEY.

Sworn to and subscribed before me Feb. 21, 1899.

—— ——.

Endorsed: Filed Feb. 21, 1899. Motion to pay for part of printing record out of fund in court, with exhibits. J. M. McKee, clerk.

CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT.

HUGULEY MFG. CO. ET AL. *vs.* J. J. ROBINSON. } No. 798.

And now comes appellee and suggests that the transcript of the record in the above-stated cause is incomplete in this:

The clerk of circuit court below has failed to send up certified copy of the order of the court which shows on the face that it was passed by consent, providing for the payment out of the proceeds of the mortgaged property in the registry of the court the amount of the judgment in favor of the Huguley Manufacturing Company against Galeton Cotton Mills for 2,500 dollars principal, besides interest, less certain taxed costs against that special finding, and which order also provided for the payment of 3,500 dollars to Dorsey, Brewster &

Howell and 3,500 dollars to B. F. Abbott, as solicitor for the plaintiffs below, in pursuance of decree previously rendered.

Wherefore appellee moves for order directing the clerk of the circuit court for the northern district of Georgia to certify and send up copy of said order.

P. H. Brewster,
B. F. Abbott,
Att'ys for Appellees.

Appeared B. F. Abbott, one of the attorneys for appellee, and made oath that the statements contained in the foregoing motion are true.

B. F. Abbott.

Sworn and subscribed to before me April 18, 1899.

——— ———.

We consent that the above order may be considered a part of the record.

April 18, 1899.

J. M. Chilton,
W. R. Hammond,
Counsel for Appellant.

It is also agreed that the Galeton Cotton Mills filed a petition to apply the rents and profits which were awarded by the master to the deficiency of the mortgaged debt, the same being the petition referred to in the decree of Feb. 28, 1898, as filed that day. It is further agreed that the clerk of said circuit court shall certify a copy of said petition and also said consent decree first above mentioned to this court as upon certiorari, which is waived.

April 18, 1899.

Hammond & Chilton,
Sol'rs Appellants.
P. H. Brewster,
B. F. Abbott,
Att'ys for Appellees.

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT.

I, J. Martin McKee, acting clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing twelve pages contain a true, full, and perfect transcript of the papers filed in this court of date Feb. 21, 1899, entitled "Motion by appellant to pay for part of printing record out of fund in court, with exhibits," and "Motion suggesting diminution of the record by appellees and agreement to correct record," filed April 18, 1899, same being filed in case of Huguley Manufacturing Company *et al. vs.* Galeton Cotton Mills *et al.*, No. 798, as fully and completely as the same now remain of record and on file in this office.

In testimony whereof I hereunto subscribe my name and affix the seal of said U. S. circuit court of appeals, at the city of New Orleans, this the 24th day of September, A. D. 1901.

(Seal United States Circuit Court of Appeals, Fifth Circuit.)

J. MARTIN MCKEE,
Acting Clerk United States Circuit Court of Appeals, Fifth Circuit.

Supreme Court of the United States.

OCTOBER TERM, 1901.

Docket No. 94.

THE HUGULEY MANUFACTURING COMPANY, WILLIAM T. HUGULEY, AND THE GEORGIA AND ALABAMA MANUFACTURING COMPANY, APPELLANTS,

versus

THE GALETON COTTON MILLS, J. J. ROBINSON, TRUSTEE, AND L. LANIER, APPELLEES.

Petition for Certiorari to Complete the Record.

The appellants in the above-stated case, pending in the Supreme Court of the United States on appeal from the circuit court of appeals for the fifth circuit, come, by their counsel, and suggest a diminution of the record in this case as the same is certified to the Supreme Court by the clerk of the circuit court of appeals, and move that this honorable court will cause a writ of certiorari to issue to bring before the Supreme Court the full and complete record in said circuit court of appeals in the cause above stated.

And the appellants respectfully state that it is apparent on the face of the record, as certified to this court by the clerk of the circuit court of appeals, that it is erroneous and incomplete in respect of the following matters, namely:

1. That the clerk of the circuit court of appeals does not state that the transcript to which his certificate is appended is a full, true, or complete copy or transcript of the record in said cause, but that it contains "a true copy of the record upon which the cause was heard in the United States court of appeals and all proceedings had in said cause, including the opinion of the court in the case of The Huguley Manufacturing Company and Alabama and Georgia Manufacturing Company, appellants, *vs.* The Galeton Cotton Mills and J. J. Robinson, trustee, &c., appellees, No. 798, as the same remains upon the files and records of said United States circuit court of appeals."

2. In the minutes of the said circuit court of appeals, on page 98 of the printed Record, the decree of the court affirming the decree of the circuit court for the northern district of Georgia, entered on the 16th day of May, 1899, was rendered in case No. 789, and all the minute entries in said cause in said court at its November term, 1899, were made in case No. 789.

3. The opinion of the circuit court of appeals, which is copied in the Record on pages 105–108, was rendered in case No. 798, and the appeal and all the proceedings thereon were had in case No. 798.

4. As the appeal and the certificate of the clerk state that the number of the case is 798 and the opinion of the circuit

court of appeals was delivered in case 798, the judgment of the Supreme Court will be rendered in that case unless the record of the circuit court of appeals is amended, either by the Supreme Court or by the circuit court of appeals, and there is nothing in the record thus certified to the Supreme Court in this case by which such amendment can be made.

5. It is impossible to identify these decrees with the decree of the circuit court of appeals for the fifth circuit until the record is amended so as to correct the discrepancy in the numbers stated above in this motion, and also in the absence of a certified transcript of the record of the circuit court of the northern district of Georgia on which the appeal was allowed by Judge Newman on the 2d December, 1898.

6. The appeal in this cause that was taken from the circuit court of the northern district of Georgia to the circuit court of appeals from the fifth circuit was allowed by Hon. William T. Newman, circuit judge, on the 2d day of December, 1898.

The petition on which said appeal was allowed was filed in case numbered 360 on the equity docket of said circuit court, and was directed to alleged errors in three decrees and decretal orders in said cause, rendered respectively on the 28th of February and the 4th day of June and the 15th of October, 1898 (Record, p. 78). In the decree of October 15, L. Lanier is described as a petitioner for the title to the property which is the subject of this litigation. It was through this petition and the proceedings thereon that said Lanier became a party interested in this cause.

7. In the record certified in this cause there is no certified transcript of the record from the circuit court of the United States for the northern district of Georgia upon which the hearing was had or the decree was rendered on the 16th of May, 1899, in the circuit court of appeals, and there is no order, decree, or memorandum in the record certified to the Supreme Court that in any way describes or identifies the papers, pleadings, or proofs on which the appeal was heard in the circuit court of appeals for the fifth circuit that was allowed by Hon. William T. Newman, circuit judge, on December 2, 1898, and was prosecuted by the appellants therein, viz., "The Huguley Manufacturing Company, William T. Huguley, and The Alabama and Georgia Manufacturing Company."

8. In the opinion of the circuit court of appeals for the fifth circuit in this cause, delivered by Shelby, circuit judge, and brought before the Supreme Court on this appeal, that court finds that "on January 1st, 1884, the Alabama and Georgia Manufacturing Company executed a mortgage or deed of trust to J. J. Robinson and two others to secure $65,000.00 of bonds issued that day." There is no copy of the mortgage or of any bond secured by it or any statement of the contents or of the purport or terms thereof in any part of the record certified to the Supreme Court.

9. Then the circuit court of appeals proceeds to find the following facts, some of which could only appear from the record in the cause, and some may depend on proofs made in the cause, namely:

(*a.*) "Subsequently the property embraced in the mortgage was sold under a decree of a State court, subject to the mortgage."

(*b.*) "Under this sale the Huguley Manufacturing Company became the purchaser of this property, subject to the incumbrance of the mortgage for $65,000."

(*c.*) "It was placed in possession of the property."

(*d.*) "A bill was filed in the circuit court of the United States for the northern district of Georgia to foreclose the mortgage, a decree of foreclosure rendered, and on appeal to this court the appeal was reversed."

(*e.*) "The decree of foreclosure being vacated by reversal the circuit court granted a petition on the part of the Huguley Manufacturing Company to restore it to the possession of the property, upon condition, however, that it pay into court $10,000, which had been paid by the purchaser under the now vacated foreclosure sale."

(*f.*) "This condition the Huguley Manufacturing Company did not comply with, but resisted."

(*g.*) "It took another appeal to this court and the decree of the circuit court was affirmed (30 U. S. App., 683; 72 Fed. Rep., 708)."

(*h.*) "At the first foreclosure sale the property was purchased for the bondholders, who organized a corporation under the name of the Galeton Cotton Mills."

(*i.*) "This corporation was placed in possession of the property under the first decree of foreclosure and held the same pending the appeal and after the reversal of the decree, and upon the second foreclosure became purchasers again and have remained continuously in possession, operating the mills on the property."

(*k.*) "The Galeton Mills were in possession of the property under the first decree of foreclosure for a period of three years and eight months."

These are all the facts upon which the circuit court of appeals based its judgment affirming the decrees of the circuit court for the northern district of Georgia.

10. The record of the proceedings in the circuit court of the northern district of Georgia in said cause, as the same is certified to the Supreme Court,—

(*a.*) Does not show the fact or the terms of the alleged sale of the mortgaged property by a State court, or that it was sold subject to the mortgage.

(*b.*) It does not show that the Huguley Manufacturing Company became the purchaser subject to the incumbrance of the mortgage, or that it was placed in possession of the property.

(*c.*) The bill is not in the record that is alleged to have been filed to foreclose the mortgage or the decree thereon or its reversal.

(*d.*) Reference is made to the volumes of reports of decided cases, which indicates that the circuit court of appeals consulted them for the purpose of ascertaining facts in considering this case, and such opinions, if they were filed in the cause or made a part of the record by reference, are required to be annexed to the record on appeal and transmitted to the Supreme Court under section 2 of rule 8 of the rules of this court.

11. Under a stipulation of counsel in this cause, copied on page 5 of the Record, the findings of the circuit court of appeals, above stated, may have reference to the records in

this cause that were filed in that court on two former appeals.

That agreement is as follows:

"CIRCUIT COURT U. S., NORTHERN DIST. OF GA.

"J. J. ROBINSON ET AL.
vs.
"ALABAMA AND GEORGIA MANUFACTURING CO. ET AL. } 360.

"Appeal to the circuit court of appeals for the 5th circuit of the United States.

"We agree that the clerk, in making up the record, may omit therefrom all such parts as appear in the record made up and transmitted on the two former appeals in this case to said circuit court of appeals.

"And either party, on the hearing of this appeal, may be at liberty to refer to any such parts of the record of said former appeals, or either of them, as they may see proper.

"July 14, 1899.

"J. M. CHILTON,
"W. R. HAMMOND,
"*Att'ys for Appellants.*
"B. F. ABBOTT, *Solicitor of Record.*
"DORSEY, BREWSTER & HOWELL."

12. The references to these reported cases, in the opinion of the circuit court of appeals in this cause, identify them as being parts of the record upon which the same was heard in that court on the appeal allowed by Judge Newman in his order dated December 2, 1898, and the opinions in those cases should have been copied in the record on this appeal (Record, p. 79).

13. And the appellants now produce in this honorable court a transcript which contains a true copy of the proceedings in said equity cause No. 360, from its beginning to its

ending, in said circuit court of the United States for the northern district of Georgia, as the same was transmitted to the circuit court of appeals for the fifth circuit, and was heard and decided in said court on April 17 and 18 and May 16, 1899.

In the certified transcript now submitted to this honorable court the proceedings in the circuit court of the northern district of Georgia in said cause, which are not contained in the transcript in this cause, filed in the office of the clerk of the Supreme Court June 25, 1900, are set forth on pages 1 to 66 of said transcript, down to the words "order entering mandate."

And from those words on page 66 to and including the words "the decree of the circuit court is affirmed," on page 188 of said certified transcript, the two transcripts are the same in substance.

14. The transcript in said cause, with the certificate of the clerk, now presented with this motion, was filed in the clerk's office of the Supreme Court of the United States on the 21st of October, 1899, in support of a motion for a writ of certiorari to review and determine the judgment and decree of the circuit court of appeals in a case entitled The Huguley Manufacturing Company *et als. vs.* The Galeton Cotton Mills *et als.*, No. 798 of the docket of said court, as provided in the act of Congress approved March 3, 1891; and said transcript was printed under the direction of the clerk of the Supreme Court and placed on file with said motion.

15. And said motion for certiorari and review having been denied, thereupon the appellants appealed from said

judgment of the circuit court of appeals for the fifth circuit to the Supreme Court of the United States in said case No. 798, and the proceedings on said appeal are set forth in the transcript filed in the Supreme Court on June 25, 1900, on page 103 to the close thereof on page 111.

16. The error and discrepancy in the said transcript between the cause numbered 798, in which said appeal was taken, following the same number in the caption of the opinion of the circuit court of appeals, and the number of the case in said court in which its judgment is recorded in the minutes on page 98 of the Record, which is cause No. 730, and the absence of a certificate from the circuit court of the northern district of Georgia, was not discovered until said record was printed, which was after the adjournment of the October term, 1900, of the Supreme Court.

17. And until said record was printed it was not practicable to bring to the attention of the Supreme Court, in a manner to conform to the rules of the court, the precise matter that was omitted from the record, as it was certified to the Supreme Court by the clerk of the circuit court of appeals in his certificate, on page 108 of the Record, dated 15th May, 1900.

18. The appeal in said cause was allowed by Don A. Pardee, circuit judge, on the 12th of May, 1900, and the transcript of the record, sent by mail, did not reach the clerk of the Supreme Court until June 25, 1900, so that the clerk of the circuit court of appeals either misdated his certificate or failed to send the transcript to the clerk of the Supreme Court until about June 20, 1900.

19. In the transcript of the record in cause No. 360, in equity, in the circuit court of the northern district of Georgia, and of the proceedings on the appeal in said cause, in the circuit court of appeals for the fifth circuit, which transcript is submitted to the court with this motion, the clerk of the said circuit court of appeals certifies as follows:

"UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

"I, J. M. McKee, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing two hundred and ten pages, numbered from one to two hundred and ten, inclusive, contain a true copy of extracts from the record in the case of The Huguley Manufacturing Co. *et als.*, No. 798, *vs.* The Galeton Cotton Mills *et als.*, as the same remains upon the files and records of said United States circuit court of appeals.

"In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of New Orleans, this 6th day of October, 1899.

"J. M. McKEE,

"*Clerk of the United States Court of*

"*Appeals for the Fifth Circuit.*"

20. These "extracts from the record" in case 798 do not contain the copies of the minutes in case 789. These are copied in the transcript, on page 98 of the print of the record in the case No. 94 on the docket of the Supreme Court, in which this motion is made.

21. Appellants are convinced but do not know the fact that the number 789 in those minutes has been inserted in the record of said cause 360, appealed from the circuit court of the northern district of Georgia, by mistake; but the power to correct such an error in the judgment of the circuit court of appeals rests with that court or with the Su-

preme Court on the appeal in this cause, and it cannot be corrected by an agreement of the parties *dehors* the record in said circuit court of appeals.

22. The two certificates of the clerk of the circuit court of appeals to these transcripts, when compared with the agreement of counsel, copied in the record, to which he certified on the 15th of May, 1900 (Record, pages 3 and 4), show that the circuit court of appeals did not sufficiently identify "the extracts from the record," or "the record upon which the cause was heard" under said agreement, as to what it contained or should contain, to enable the clerk to certify what was the true, full, and complete record in the cause that it affirmed at the November term, 1898, of said court, and such identification is indispensable to the proper hearing of this cause in the Supreme Court.

23. If such errors, irregularities, and deficiencies in the records of the circuit court of appeals may be corrected in the Supreme Court on an assignment of errors by the appellants, a writ of error is indispensable to enable them to make such an assignment, so that the entire record shall be before the Supreme Court.

24. If this is a matter that cannot be corrected on the motion of appellants, made in the Supreme Court, but can only be corrected by a new proceeding in the circuit court of appeals, or if the correction cannot be made in the Supreme Court because the true state of the record has not been determined in the circuit court of appeals, in either case the appellants respectfully suggest that the cause be remanded to that court, without prejudice to the appeal,

with direction that said court shall define and declare what is the full and complete record upon which this cause was heard and determined in the circuit court of appeals for the fifth circuit at its November term, 1900; that the same may be correctly certified to this honorable court.

25. And the appellants pray that such writ of certiorari shall issue as will bring before this honorable court the full and complete record on which this cause was heard and determined in the circuit court of appeals for the fifth circuit, and that in connection with the granting of such writ this honorable court will issue such mandate to said circuit court of appeals as may be proper and necessary to cause it to ascertain and place upon its records the pleadings, proceedings, proofs, orders, and decrees of the circuit court of the northern district of Georgia upon which the judgment or decree of said court of appeals in this cause was founded, and if it is necessary and proper to that end that this cause be remanded to said court, without prejudice to the appeal taken therein by appellants, to enable or require said circuit court of appeals to correct any errors or imperfections in its records in this cause that may be found to exist, and especially any error that may be found in the minutes of said court as to the judgment of affirmance therein rendered at the November term of said court, in the year 1894.

JOHN T. MORGAN,
Attorney for the Appellants.

FILED
NOV 18 1901
JAMES H. McKENNEY,
Clerk.

No. 94.

Affidavit of Huguley.

Filed Nov. 18, 1901.

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 94.

THE HUGULEY MANUFACTURING COMPANY ET AL., APPELLANTS,

vs.

THE GALETON COTTON MILLS ET AL.

AFFIDAVIT OF WILLIAM T. HUGULEY IN SUPPORT OF MOTION FOR WRIT OF CERTIORARI.

JOHN T. MORGAN,
Attorney for Appellants.

(17,813.)

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 1235

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 94.

THE HUGULEY MANUFACTURING COMPANY AND THE ALABAMA AND GEORGIA MANUFACTURING COMPANY AND WILLIAM T. HUGULEY, APPELLANTS,

vs.

THE GALETON COTTON MILLS, J. J. ROBINSON, TRUSTEE, AND L. LANIER.

AFFIDAVIT OF WILLIAM T. HUGULEY.

William T. Huguley appeared before the undersigned, James D. Maher, a notary public in and for the District of Columbia, and, being duly sworn, states on oath that he has been the sole agent of the appellants in preparing the record in this case for the hearing before the Supreme Court, and he has supplied the money to pay for all the transcripts and all the printing in the case until his means have been exhausted. The other appellants are insolvent and

have no means to assist in the prosecution of this suit. He deposited with the clerk of this court the money required to pay for the printing of the transcript of the record on this appeal, which has been paid for, and provided a still larger sum and placed it subject to the order of the clerk if it should be found that other parts of the record in the circuit court of the northern district of Georgia could be printed as a part of the transcript in the cause without obtaining the order of the Supreme Court. The counsel of affiant carefully examined the certificate of the clerk appended to the transcript filed in this case, and he having certified that it contained a true copy of the record upon which the cause was heard in the United States circuit court of appeals and all the proceedings had in the said case, and the opinion of the court therein, as the same remains on the files and records of the circuit court of appeals, affiant's counsel advised him that the transcript could not be enlarged by the incorporation of other matters without the order of the Supreme Court.

At the same time a record in this case was on the files of the Supreme Court on a motion for certiorari, which was certified at a previous day by the same clerk, which transcript set out various proceedings in said cause which are not contained in the later transcript now before the court, and affiant believed that said transcript filed on the motion for certiorari contained all the proceedings in said cause upon which the case was heard in the circuit court of appeals under the stipulations of counsel, as stated in the record.

During a large part of the past summer the clerk of the circuit court of appeals, who made the certificate upon both

these transcripts, was in ill health and died, and he could do nothing to explain or rectify these manifest embarrassments and mistakes, and his death has put it out of affiant's power to explain them. There is no certificate in the record sent up from the clerk of the circuit court of the northern district of Georgia which sets forth or establishes the record in said court that was taken to the circuit court of appeals on the appeal that was determined in this case, as shown in the transcript now before the Supreme Court. In said record there are stipulations of counsel that refer to printed volumes of transcripts in this case that were the foundation of two previous hearings on appeals from said circuit court to the circuit court of appeals. Affiant has searched diligently for such transcripts and has been able to obtain a copy of each of them, which he believes to be correct, and now presents the transcripts with this affidavit. They came into his possession too late to be printed with this affidavit.

Affiant has not the means to enable him to print these transcripts, which are herein referred to as transcripts A and B.

Affiant's counsel presented these transcripts to the counsel for the appellees, stating what they were, and asking him to examine them and to consent that they should be filed as part of the record in this case. The counsel for the appellees declined to examine them, saying that the appellees would make no agreement or consent as to the record in this case, as affiant is informed and believes and so states.

WM. T. HUGULEY.

Sworn to and subscribed before me this 18th November, 1901.

JAMES D. MAHER,

[SEAL.] *Notary Public, District of Columbia.*

[Endorsed :] File No., 17,813. Supreme Court U. S., October term, 1901. Term No., 94. The Huguley Mfg. Co. *et al.*, app'ts, *vs.* The Galeton Cotton Mills *et al.* Affidavit of Wm. T. Huguley in support of motion for writ of certiorari. Filed Nov. 18, 1901.

No. 94.

Office Supreme Court
FILED
NOV 4 1901
JAMES H. McKENNEY,
Clerk

Affidavits for Appellant.

Supreme Court of the United States.

OCTOBER TERM, 1901.

Filed Nov. 4, 1901.

No. 94.

THE HUGULEY MANUFACTURING COMPANY ET AL., APPELLANTS,

vs.

THE GALETON COTTON MILLS ET AL.

AFFIDAVITS OF WM. R. HAMMOND AND WM. T. HUGULEY IN SUPPORT OF MOTION FOR WRIT OF CERTIORARI.

[illegible]N T. MORGAN,
Counsel for Appellants.

(17,813.)

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 1087

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 94.

THE HUGULEY MANUFACTURING COMPANY ET AL., PETITIONERS,

versus

THE GALETON COTTON MILLS ET AL., RESPONDENTS.

PETITION FOR CERTIORARI TO COMPLETE THE RECORD.

STATE OF GEORGIA, }
Fulton County. }

Before the undersigned, a notary public in and for said county, personally comes William R. Hammond, who, on oath, deposes and states as follows:

Deponent was of counsel in the causes before the circuit court of appeals for the fifth judicial circuit, mentioned and referred to in the third paragraph of the copy of the affidavit of William T. Huguley on behalf of himself and the Huguley Manufacturing Company, after the first appeal in connection with the proceedings that were had to recover the rents, issues, and profits from the Galeton Cotton Mills

during the time of its occupancy of the mortgaged premises, under the sale under the original decree of foreclosure which was reversed on the first appeal.

Deponent has carefully read over the attached copy affidavit of William T. Huguley in regard to what occurred in connection with the appeal from the United States circuit court of appeals for the fifth judicial circuit, and states that while he does not remember all the details stated by Mr. Huguley in said affidavit, that he does recall and remember the main facts connected therewith, as stated by Mr. Huguley, and his statement of the same is substantially correct.

Deponent has no doubt that all the details, as stated by Mr. Huguley, are correct and accurate, although he cannot recall and remember each and every one of them. Deponent does remember distinctly that under the reference for accounting for rents and profits a very large and voluminous record was returned to the clerk's office in Atlanta, and that there was no accounting made by the Galeton Cotton Mills in the form of "debtor and creditor," as required by the equity rules, but that instead thereof the Galeton Cotton Mills, through their counsel, brought in before the auditor in said cause a very large quantity of loose papers, which evidently had not been assorted or digested, and stated that they were the vouchers which we had called for. Deponent now remembers that they were dumped *en masse* before the special master, as Mr. Huguley states, and there must have been several bushels of them, as he states. Deponent does not remember what these papers were, but only knows that it was practically impossible for counsel to do anything with them in the way of arriving at any correct conclusion in reference to the accounting which should have been made under the equity rules, in the form of "debtor and creditor," by the Galeton Cotton Mills.

Deponent does remember that under this state of facts all of these papers having been returned by the special master

to the clerk's office as a part of the record in said cause, that it was an exceedingly difficult and troublesome problem for deponent and his associate, Judge John M. Chilton, to determine what was to be done in reference to the printing of the record on the appeal that was taken to the circuit court of appeals for the fifth judicial circuit. Deponent did attend the said circuit court of appeals with his associate and did make a motion to tax the fund in court with the expense of printing the record, counsel for appellee having refused to make any consent in reference to the abridgment of the record. Deponent did earnestly endeavor to procure a consent from the counsel for appellee as to the abridgment of the record, but without any success whatever, so much so that deponent was impressed with the idea that it was their purpose to prevent the appeal by putting upon the appellants the enormous expense that would have been necessary to print all of this record.

As deponent now remembers, the consent for the abbreviation that was made was only obtained after a strong suggestion of the same was made by Hon. Don A. Pardee, one of the judges of the circuit court of appeals. Deponent was impressed with the idea that counsel for appellee felt under some constraint to make the consent after it was suggested by Judge Pardee, because they feared that the expense of printing the entire record would be ordered by the court to be taxed against the fund in court.

Deponent further states that it was distinctly understood and agreed between deponent and his associate, as counsel for appellants, and the court that the court would not confine itself to the consideration alone of the portion of the record that was printed, but would take into consideration any portion of the record that was not printed that might be deemed necessary to a proper determination of the case.

Deponent believes that Mr. Huguley would remember details of the facts in reference to this whole transaction better than deponent would, as he was exceedingly vigilant

in noting everything that occurred, and extraordinarily diligent in keeping up with every phase and detail of the cause.

W. R. HAMMOND.

Sworn to and subscribed before me this October 31, 1901.

[Seal of Edgar Dunlap, Notary Public, Fulton County, Ga.]

EDGAR DUNLAP,
Notary Public, Fulton County, Ga.

Petition for Certiorari to Complete the Record.

THE HUGULEY MANUFACTURING COMPANY ET AL., *Petitioners,*
versus
THE GALETON COTTON MILLS ET AL., *Respondents.*

DISTRICT OF COLUMBIA, }
City of Washington. }

Before the undersigned, a notary public, comes William T. Huguley, who, on oath, avers as follows:

1. That he is the same William T. Huguley, one of the petitioners in the cause, No. 94, October term, 1901, pending in the Supreme Court of the United States, entitled: "The Huguley Manufacturing Company, William T. Huguley, and The Alabama and Georgia Manufacturing Company, appellants, *vs.* The Galeton Cotton Mills, J. J. Robinson, trustee, and L. Lanier, appellees."

2. Respecting the proofs and exhibits offered in the United States circuit court of appeals, fifth circuit, No. 798, and certified to the Supreme Court of the United States and set out in transcripts and brief of Hon. John T. Morgan, of counsel for petitioners, and the history and facts resulting in the correspondence and "consent orders" between counsel,

appearing in printed transcript No. 17813, docket No. 94, pp. 1–6, deponent testifies as follows:

3. During the course of the several appeals from the circuit court of the United States for northern district of Georgia to the United States circuit court of appeals, fifth circuit, three in number, and especially under the reference for accounting for rents and profits, had thereunder, pursuant to the mandate of the latter court, a voluminous record, covering testimony and exhibits, was thus piled up in the office of the clerk in Atlanta, largely due to the failure, on part of the accounting parties, the Galeton Cotton Mills *et al.* and their solicitors, to observe the usual equity rules in connection with such accounting, and in lieu of the proper statement in the form of "debtor and creditor," with customary exhibits accompanying, confined strictly to the accounting cotton-duck mill, plunging before the special master, *en masse*, several bushels and baskets of miscellaneous so-called "vouchers" and other papers, unidentified and unproven, with no attempt at proof, all covering the operations not only of the accounting cotton-duck mill, but of two other cotton mills, namely, the defendant The West Point Manufacturing Company and also the Lanett Cotton Mills, but the greater bulk of which in nowise related to the actual operations or business of the said accounting corporation. Again, defendants having introduced in defense, and as their sole and only defense, to the charge of movants for rents and profits, two certain books styled ledger and journal, and certain other copies of other transactions, cotton books, pay-roll books, accounts sales, and the like, and rested, the greater bulk of the oral testimony adduced by said defendants, and making up more than half of the typewritten record of testimony, was restricted to the single charge of movants of $40,000 or $50,000 for wastes and damages, etc., awarded the movants under said mandate and decretal order, if any, and related solely to the defense thereto.

4. Deponent avers that when in the act of preparing to carry up the cause to the circuit court of appeals for the third time, confronted as they were with the above condition of the record, the cost to print which was estimated would exceed, if printed in full, $10,000, his solicitors, Judge Wm. R. Hammond and Judge John M. Chilton, were at exceeding pains to accomplish due and proper abridgment of said record, as fully appears by the certified transcript and affidavits filed herewith. In this connection, and in proof of the great length to which deponent consented to go and the sacrifice voluntarily made in order to contribute his part toward the reasonable abridgment of this transcript, affiant refers in particular to the proposition made by his solicitors to the solicitors of defendants, in substance, that the claim for said $40,000 or $50,000 of wastes, damages, etc., contended for, with ample and positive evidence of numerous creditable witnesses to support it, would be waived and abandoned, provided said solicitors of the Galeton Cotton Mills *et al.* would consent to the co-operation asked for, looking to said abridgment, pointing out to them that the omission of such testimony named would accomplish a reduction of more than one-half of the whole transcript to be sent up.

5. Notwithstanding the several most reasonable and fair propositions of affiant's solicitors advanced, the solicitors of the defendants utterly refused to lend their consent or co-operation, but, instead of abridging, they insisted and persisted in affiant printing the whole voluminous record, including all that mass of miscellaneous papers and books, etc., relating to the other cotton mills and their transactions, and, among other things, numbers of cotton books, etc., of such of the great cotton houses whose testimony affiant had invoked, but the evidence from which had been compiled and submitted in schedule form.

6. Thus matters stood when, having exhausted all reasonable endeavors, and encouraged by Honorable Don A. Pardee, circuit judge, who, happening in Atlanta at that time, was shown the said "bushels and barrels" of documents, the solicitors of affiant applied, some three weeks in advance of the hearing, to the circuit court of appeals, New Orleans, for relief, on motion to tax a certain fund of $57,000 in the registry of court, and the application as to which was in dispute, with all proper costs of printing such record as said court of appeals should direct brought up. Counsel for both sides, as well as affiant and L. Lanier, appeared before the court. The result was that, at the instance of Judge Pardee, who dictated the consent order appearing on page 1 of the transcript (No. 94), it was then and there expressly agreed that the appellants should print only the 156 pages of pleadings, etc., as then pointed out and now certified up, and inasmuch as Judge Newman, in the lower court, had treated said $57,000 as a fund in court, ordering certain disbursements thereunder to attorneys, master, and stenographer, etc., Circuit Judge Pardee held that the court would order such other portion of the record as it might deem necessary or proper thereafter to be printed, taxing said fund with the costs thereof. This consent order the solicitors of appellants cheerfully subscribed to, but the solicitors of appellee, under instructions from said Lanier, while hesitating, finally reluctantly yielded and signed, but not until warned that unless they lent their assent the court would meet the issue by passing a special order in premises.

7. Affiant can testify to the accuracy and truthfulness of each and all the foregoing facts, which were so deeply impressed upon his mind and recollection at the time, and since refreshed from time to time, by reason of the great difficulties then confronting him, rendered all the more onerous by the persistent and unreasonable stand taken in said matter of abridgment, etc., by said Lanier and his solicitors in

their effort to smother affiant's ability to appeal, and the consequent relief felt when absolved by the said court of appeals from further responsibility in the whole matter of the record.

WILLIAM T. HUGULEY.

Subscribed and sworn to before me this 4th day of November, 1901.

[Seal of L. M. Fox, Notary Public, District of Columbia.]

L. M. FOX,
Notary Public.

[Endorsed:] File No., 17,813. Supreme Court U. S., October term, 1901. Term No., 94. The Huguley Mfg. Co. *et al.*, app'ts, *vs.* The Galeton Cotton Mills *et al.* Affidavits of Wm. R. Hammond and Wm. T. Huguley in support of motion for writ of certiorari. Filed Nov. 4, 1901.

No. 94.
Motion as to return to writ of Certiorari.
Filed Dec. 9, 1901.

FILED
DEC 9 1901
JAMES H. McKENNEY,
Clerk

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 94.

THE HUGULEY MANUFACTURING COMPANY ET ALS., APPELLANTS,

vs.

THE GALETON COTTON MILLS ET ALS., APPELLEES.

Motion That Transcripts of Records on File Be Accepted by the Court as a Sufficient Return to the Writs of Certiorari Ordered in This Case.

JOHN T. MORGAN,
Attorney for Appellants.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 1423

Supreme Court of the United States

OCTOBER TERM, 1901.

No. 94.

THE HUGULEY MANUFACTURING COMPANY ET ALS., APPELLANTS,

vs.

THE GALETON COTTON MILLS ET ALS., APPELLEES.

Motion That Transcripts of Records on File Be Accepted by the Court as a Sufficient Return to the Writs of Certiorari Ordered in This Case.

The appellants in this case move the court that the transcripts of record marked Exhibits A and B to the affidavit of William T. Huguley filed in this case, bearing date the 18th of November, 1901, be taken as a sufficient return to the writs of certiorari ordered by the court; and in support thereof they state the following facts:

1st. The original transcripts of records, of which said exhibits are printed copies, were certified by the clerk of the United States circuit court for the northern district of Georgia

on appeals taken in this cause from said circuit court to the circuit court of appeals for the fifth circuit as being true copies of said records.

2d. Said transcripts are the same that are referred to in the agreement of counsel in this case, dated July 14, 1899, and copied on pages 5 and 6 of the transcript of record filed in this cause on the 25th of June, 1901.

3d. That appellant, William T. Huguley, on the 26th of November, 1901, sent complete and correct printed copies of said Exhibits A and B to the clerk of said circuit court of appeals, who received the same by mail, with the request that said clerk would certify the same to the Supreme Court as a return to the certiorari ordered in this cause, and said clerk has refused to make such certificate, for the reasons stated in the following letter to William T. Huguley:

Copy.

Nov. 26, 1901.

Mr. J. MARTIN MCKEE,
Acting Clerk U. S. Circuit Court of Appeals,
New Orleans, La.

MY DEAR MCKEE: Senator Morgan authorizes me to request you to compare the two transcripts of records expressed to you this date, viz., volumes 1 and 2, with those you have on file under our original appeal and under our second appeal from the circuit court of the United States for the northern district of Georgia (*vide* Fuller, clerk's certificates), and after satisfying yourself that these two copies are duplicates of the originals preserved in your files, then forward us by first return mail your certificate accordingly, as per copy accompanying, framed by Senator Morgan to meet the facts and the purpose for which he wishes these two original transcripts to be thus identified.

I am gratified to report that, at yesterday's session of the U. S. Supreme Court, the Senator's motion suggesting diminution of the record and praying for certiorari to complete the record, was duly granted, and our hearing on the complete record is set down for early in January.

As no time is to be lost, see to it that your certificate, with these two sample copies as suggested, are returned forthwith, and we will appreciate your promptness.

In looking through your files, should you find any of these records (vols. 1 and 2), other than the one of each you have to retain under your rules, and can spare us same, it will be a very great favor to us if you would kindly return same with these two sample copies expressed.

I have filed some 8 or 9 of vol. 1, and 16 or 17 copies of vol. 2, with the clerk of the Supreme Court, but we need a few more. I have told the Senator I could trust you to act promptly.

Truly, WM. T. HUGULEY.

NEW ORLEAN, LA., *November* 29, 1901.

WM. T. HUGULEY, Esq., *Washington, D. C.*

DEAR SIR: I have your favor of 26th inst., in reference to certifying to two copies of record which I have today received per express.

I find that the cost for giving my certificate to these two volumes will be approximately $294.40, and as I am responsible for all costs earned in this office whether collected or not, I should prefer to receive N. Y. or N. O. exchange for this amount before sending out copies.

Very truly yours,

CHARLES H. LEDNUM, *Clerk.*

4th. That the sum of $294.40, claimed by the clerk of the circuit court of appeals for certifying said copies of the records of said circuit court, is not warranted by the law or

the practice of the Supreme Court in such proceedings and is unjust.

5th. That the attorneys of record for the appellees in this case, being requested by the attorney of the appellants to admit that said Exhibits A and B, on file in this court, are, according to the purport thereof, true copies of the records of the circuit court of the northern district of Georgia, that are referred to in the agreement of counsel in this case in said circuit court of appeals, as set forth on pages 5 and 6 of the record thereof filed in the Supreme Court, have refused to make such consent or any consent on the subject.

6th. That if the Supreme Court should require said Exhibits A and B to be copied out, from the records of said court, by the clerk thereof, it would take a longer time to make such copies than will elapse until this case is reached in its regular call on the docket, for hearing, and the expense thereof will be unnecessary, for the purposes of justice, or as a compliance with the rules and practice of the court, and will increase the costs in this case unnecessarily.

JOHN T. MORGAN,
Attorney for Appellants.

Comes William T. Huguley, one of the appellants in the case stated in the foregoing motion, before the undersigned, a notary public of the District of Columbia, and, being by me duly sworn, he states on oath as follows:

That the letter set forth in this motion, from the clerk of the circuit court of appeals for the fifth circuit, and addressed to affiant, was received by due course of mail and is in reply

to a letter addressed by him to the acting clerk, which is therein referred to.

That he sent to said acting clerk a copy, in print, of Exhibits A and B, which are appended to his former affidavit filed in this case, and requested him to certify the same as parts of the record in this case, that were designated in the agreement of counsel set forth on pages 5 and 6 of the record in this case, and formed part of the record thereof upon the last hearing in the circuit court of appeals for the fifth circuit.

The copies of Exhibits A and B, in print, that affiant sent to said clerk are the same referred to in the letter above incorporated in this affidavit. Affiant carefully compared these documents, and he believes that they are true copies of said Exhibits A and B, on file in this case, and the same are still in the possession of the clerk of said circuit court of appeals.

Affiant obtained these prints from the counsel who had formerly represented these appellants in this case in the circuit courts of appeals, and he has had no opportunity of comparing them with the original records; but he states that they are copies of the same prints that are referred to in said agreement of counsel set forth on pages 5 and 6 of the record in this cause, that were used, under said agreement, on the hearing of this cause in the said circuit court of appeals.

None of said copies obtained by affiant were perfect, for the reason that his counsel in making up their briefs in this case in said circuit court of appeals on the last appeal had taken clippings from them, but affiant found enough copies of the original print to enable him to supply all of

these clippings and to reproduce, in the original print, full and complete copies of the same in the form that they were used on the hearing of this case in the circuit court of appeals, so that said Exhibits A and B and the copies thereof which affiant sent by mail to the clerk of the circuit court of appeals, as above stated, are true copies of the printed transcripts referred to in the agreement of counsel on pages 5 and 6 of the record in this case and were parts of the record that were referred to by counsel of all the parties in this case and by the circuit court of appeals on the hearing of this case, and also on each of the two appeals previously taken therein from the circuit court of the northern district of Georgia to the circuit court of appeals.

Affiant was advised by his counsel in these several appeals that they were necessary for the obtaining of his just rights in this litigation and he has never in any instance attempted to hinder, delay, or obstruct the speedy hearing and decision of any question or issue in this entire proceeding.

The earliest proceedings had in this case in the nature of orders and decrees therein swept him out of the use and possession of a property of great value and money-earning capacity, his interest in which was his source of living and comprised almost his entire property. He has been compelled to work very hard and to tax the generosity of his friends severely to obtain the means of defending what he believes to be his just legal and equitable rights and those of the bondholders of this trust estate, until his means are exhausted and his credit is nothing more than the indulgence of his friends, who have faith in his integrity and in the justice of his defense in this case.

Affiant attaches to this affidavit, as parts thereof, recent correspondence between his attorney of record on this appeal, who has had no previous connection with this case, and the attorneys of record for the appellees, which shows the efforts to reach an agreement as to the return to the certiorari ordered by the court and the result of that effort, as follows:

WASHINGTON, D. C., *Nov.* 25, 1901.

Messrs. BRANDEIS & DUNBAR,
Boston, Mass.

GENTLEMEN: The enclosed memorandum was prepared by the clerk of the Supreme Court and states the action of the court in the case of The Huguley Manufacturing Company, The Alabama and Georgia Manufacturing Company and William T. Huguley, *vs.* The Galeton Cotton Mills, J. J. Robinson, trustee, L. Lanier and others, No. 94, on the Supreme Court docket. The appellants placed on file in this case two printed records sent up on former appeals in this case from the circuit court of the northern district of Georgia, which I showed your Mr. Brandeis. They are certified by the clerk of said circuit court, and were before the circuit court of appeals, by stipulation of counsel, as parts of the record on which this case was heard in said circuit court of appeals. The first of these transcripts was certified by Olin C. Fuller, clerk of the circuit court of the United States for the northern district of Georgia, on the 9th December, 1892, and contains 193 pages of printed matter. The second was certified by the same clerk on the 27th day of July, 1895, and contains 300 pages of printed matter.

These transcripts, with that on file in this cause, comprise the entire record in this cause that was before the circuit court of appeals when it was heard on the 17th and 18th days of April, 1899.

To avoid the great and needless expense of having these two certified transcripts copied by the clerk of the circuit court of appeals, in which court they are filed as papers in this cause, I respectfully request that you will agree that the copies that are on file in the office of the clerk of the Supreme Court shall be taken and considered as a return to the writ of certiorari, in this case, ordered by the Supreme Court.

Will you kindly inform me, at your earliest convenience, whether you will agree to the above proposition?

I enclose a stipulation embodying the same.

Very respectfully, JOHN T. MORGAN,
Attorney for Appellants.

Memorandum.

(Copy.)

No. 94.

Nov. 26, 1901.

Motion to dismiss postponed to hearing on merits.

Certiorari granted without prejudice. Duly certified copy of record sought to be supplied may be filed as return to the writ.

Stipulation.

IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1901.

THE HUGULEY MANUFACTURING COMPANY, THE ALABAMA AND GEORGIA MANUFACTURING COMPANY, and WILLIAM T. HUGULEY, *Appellants*, *vs.* THE GALETON COTTON MILLS, J. J. ROBINSON, *Trustee*; L. LANIER, and Others, *Appellees*. } No. 94.

Nov. 26, 1901.

In this case it is stipulated by the attorneys of the appellants and of the appellees, respectively, that the two transcripts of record filed in this cause and certified by the clerk of the circuit court of the United States for the northern district of Georgia, as transcripts of the record of the proceedings in this cause in said circuit court, one of which certificates is dated the 9th of December, 1892, and the other is dated the 27th of July, 1895, shall be taken and considered as a return to the writ of certiorari issued in this cause, duly made and certified in accordance with the order of the Supreme Court.

—— ——,
Attorney for Appellants.

—— ——,

—— ——,
Attorneys for Appellees.

NOVEMBER 26, 1901.

220 Devonshire Street,
Boston, Mass., *November* 29, 1901.

Re Riverdale — Huguley. G/B.

Hon. John T. Morgan,
United States Senate, Washington, D. C.

Dear Sir: I am in receipt of your letter of the 25th, and have just wired you as follows: "Your letter twenty-fifth received. Cannot sign stipulation. Have written."

When I was in Washington on the 11th, you showed me two records which you held in your hands and said were the records in the circuit court of appeals on the first and second appeal, and pointed out to me that those copies of the record were mutilated copies, some portions having been cut out. I did not have these copies of record in my own hand, and of course have not examined them. I have not myself any copy of the record of this case in the circuit court of appeals on the first and second appeal, and I understood from you that you had no copies that you could furnish me.

I understood when you addressed the court on the 11th about the filing of additional papers which you were to have printed, that you proposed to have duly certified copies of the records in the circuit court of appeals on the first and second appeal printed and filed with your petition, and I accordingly wrote the clerk of the Supreme Court to send me copies of such additional papers as you might file. He wrote me under date of November 19th that he was unable to furnish me copies of Exhibits "A" and "B" referred to in Mr. Huguley's affidavit filed November 18th, 1901, which exhibits I assume to be the records on the first and second appeal to which you now refer.

I am not familiar with these records. I must leave you, therefore, to a strict compliance with the rules and order of the court in this respect.

Yours very truly, Louis D. Brandeis.

This day came before the undersigned, a notary public for the District of Columbia, William T. Huguley, one of the appellants in the above-stated case, who, being by me duly sworn, states that the matters stated in the foregoing motion are true when stated as of his own knowledge, and when stated upon information and belief, he believes the same to be true.

Sworn to and subscribed before me on this the — day of December, 1901, as witness my hand and notarial seal.

Notary Public.

Supreme Court of the United States.

OCTOBER TERM, 1901.

Filed Oct 17, 1901.

No. 44.

THE HUGULEY MANUFACTURING COMPANY, WILLIAM T. HUGULEY, AND THE ALABAMA AND GEORGIA MANUFACTURING COMPANY

v.

THE GALETON COTTON MILLS, J. J. ROBINSON, TRUSTEE, AND L. LANIER.

Statement of the Case, Assignment of Errors, Argument, and Brief Relating to the Motion for Certiorari to Bring up a Complete and True Record, and as to the Appeal in This Cause.

JOHN T. MORGAN,
Attorney for Appellants.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 902

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 94.

THE HUGULEY MANUFACTURING COMPANY, WILLIAM T. HUGULEY, AND THE ALABAMA AND GEORGIA MANUFACTURING COMPANY

vs.

THE GALETON COTTON MILLS, J. J. ROBINSON, TRUSTEE, AND L. LANIER.

Statement of the Case, Assignment of Errors, Argument, and Brief Relating to the Motion for Certiorari to Bring up a Complete and True Record, and as to the Appeal in This Cause.

I.

1. The petition for certiorari, to perfect the record, sets out the deficiencies in the transcript certified by the clerk of the court of appeals, and it presents a certified copy of the record which supplies the parts omitted, as far as is possible in the state of the record in this cause, in the circuit court of the northern district of Georgia and in the circuit court of appeals for the fifth circuit.

2. The facts to be supplied to perfect the transcript being matters of record in said courts, they are sufficiently established by the certificates of the clerk of the court of appeals, and they are verified in the affidavit filed in this cause on behalf of the appellants.

3. But the *imperfections* of the record certified in this cause, which may be the result of clerical errors, are such that it requires the action of a court to correct them, because they consist in a discrepancy and contradiction between the minutes of the circuit court of appeals (on page 98 of the record), and the appeal, and the allowance thereof, and the proceedings thereon, and the record of the opinion of the court of appeals, on pages 99 to 111, inclusive.

II.

The appellants have not had the right, nor is it their duty, to apply to the circuit court of appeals for the amendment or correction of a decree that is adverse to them, in order to sustain its validity.

III.

1. The findings of facts, as stated in the opinion of the circuit court of appeals, on which its judgment is based, go back to a bill that was filed by J. J. Robinson to foreclose a mortgage made on the first day of January, 1884, by the Alabama and Georgia Manufacturing Company, and a sale of the mortgaged property under a decree of a State court, at which the Huguley Manufacturing Company was the purchaser, and was placed in possession of the property.

The first alleged default in the payment of interest on the bonds was on January 1, 1891, and the bill for foreclosure was filed in that month.

2. The property was sold under a decree in this cause, which was subsequently reversed, and it was so incomplete that it could not have been complied with. The property was purchased by the Galeton Cotton Mills. The possession of the property was delivered to this purchaser, and the Huguley Manufacturing Company was ousted from the possession by the decree that was so reversed.

3. The Galeton Cotton Mills were in possession of the mortgaged property for three years and eight months under the decree of foreclosure that was reversed.

4. The circuit court of appeals in their findings and decree state that "the property embraced in the mortgage was sold under a decree of a State court subject to the mortgage. Under this sale the Huguley Manufacturing Company became the purchaser and owner of the property, subject to the incumbrance of the mortgage for about $65,000," before this bill was filed.

5. This decree of a State court and the sale under it, which conferred the ownership of the property on the Huguley Manufacturing Company, subject to the mortgage, is not in the record certified to the Supreme Court.

6. On page 14 of the record now before the court an amendment of a petition is set out which indicates that the Huguley Manufacturing Company had, at some previous

term of the court, intervened for its rights by petition, but that original petition and the proceedings under it are not found in the record.

7. The "owner of the property" was kept out of possession for three and two-thirds years by a purchaser under a decree of foreclosure that was reversed, and the court of appeals say that "the real controversy in the present litigation is about the rents of property during this period." And the court declined to consider any other of the many questions that were assigned for error.

If this were the only material question in the case, the pleadings and proofs on which it was decided should appear of record; yet neither the original bill, nor the proceedings thereon, nor the decree that was reversed, nor the proceedings by petition, based on that reversal, nor a copy of the decree or proceedings of the State court, nor the conditions imposed upon the Huguley Manufacturing Company, to which objection was made, nor the proceedings on that litigation, nor the mortgage out of which this entire controversy originated, are set out in the record in this cause.

8. The court of appeals say, in their opinion:

"We are relieved from stating these questions and the facts relating to them, more minutely, by the opinions of the learned judge who rendered the decrees appealed from in the circuit court. Those opinions will appear in the report of this case."

The opinion of the judge who rendered the decree of March 30, 1895, which was affirmed on appeal to the circuit court of appeals on the 14th of January, 1896, is not in the record. (See Record, pages 6 to 11, inclusive.)

Nor is any opinion of the learned judge on any proceeding before that date, or of the circuit court of appeals in respect thereof, set out in the record; so that the facts as they were found by the judge of the circuit court are not otherwise in this record.

9. On the 23d of February, 1898, the judge of the circuit court rendered an opinion and decree in this case, which is set forth on pages 46 to 53 of the record. The findings of facts in that opinion are thus stated:

"The greater part of the previous history of this case can be found in the opinions of the court in Robinson, trustee, *vs.* The Huguley Mfg. Co. *et al.*, 51 F., 268; 56 F., 690; 67 F., 189; 72 F., 708.

"After the last decision of the appellate court as reported in 72d F., 708, *supra*, the property was sold under the last decree and bought by the same purchasers as at the former sale."

In a subsequent decree of Judge Newman in this cause, rendered April 11, 1898 (Record, pages 55 to 61), the court states as follows:

"In order to make clear what is now for hearing and determination in this case, it is probably best to give a brief statement of what has occurred before, during the progress of the case.

"On the 21st day of January, 1891, J. J. Robinson, trustee, filed a bill in this court against The Alabama and Georgia Manufacturing Company, The Huguley Manufacturing Company and W. T. Huguley for the purpose of foreclosing a mortgage executed by the Alabama and Georgia Manufacturing Company to Huguley, Yancey and Robinson as trustee. Yancey was dead. Huguley's interest was alleged to be ad-

verse to that of the bondholders, so that Robinson filed the bill alone and made Huguley a party defendant. The foreclosure was for default in the payment of interest; the defense was that the interest was tendered within the time required, and that under the facts complainant was not entitled to a foreclosure.

"A decree was rendered foreclosing the mortgage, in the circuit court, which was reversed in the circuit court of appeals, not because of any error in the decision of the court that complainant was entitled to foreclosure, but on the ground that there had been no accounting as to the bonds on which interest had been paid, and those on which interest had not been paid.

"In the meantime, and pending the appeal, the property had been sold and had been bought in for the bondholders by a committee representing their interests. The case coming back to the circuit court, the Huguley Manufacturing Company demanded restitution, which was awarded on certain conditions, which conditions were not complied with.

"The case was referred to a master, an accounting was had and a decree subsequently rendered foreclosing the mortgage for $45,000 principal and $17,005.92 interest, with costs. Under this decree the property was sold for $66,000. Afterwards the property was again sold and bought by the former purchasers, that is, by the mortgage bondholders. There had elapsed between the first and second sales three years and eight months.

"An application was made to the court by the Huguley Manufacturing Company to require the purchasers to account for the rents and profits during the time of their possession under the first sale and before the second purchase. An order was granted to this effect and a master was appointed to hear evidence and take an account. The master, after a lengthy hearing, reported the amount of the rents and profits during the three years and eight months, which report, after slight modifications, was approved for $35,875.53. Judgment had

been rendered in favor of Robinson, trustee, for any deficiency between the amount of his debt and the amount the property brought at the sale.

"This deficiency is a few thousand dollars more than the amount of the rents and profits found by the master against the purchasers.

"Motion is now made by the purchasers, who, as stated, are the bondholders, to set off the amount found for rents and profits during the time of their possession between the two sales, against the amount of the deficiency decree. This is resisted by the Huguley Manufacturing Company; it is claiming rents and profits, and that is the question now presented for determination.

"The mortgage under which the property was sold was made by the Alabama and Georgia Manufacturing Company in January, 1884. Subsequently, by reason of some litigation in the State court, the property of the Alabama and Georgia Manufacturing Company went into the hands of a receiver, and was sold and bought by persons who afterwards organized the Huguley Manufacturing Company, they buying at receiver's sale subject to the mortgage of Robinson, trustee."

IV.

The matter above quoted is all that the record now before the court contains showing any statement in the several decrees of the judge of the circuit court, as to facts found by him in this cause. These statements of findings could not have relieved the appellate court from its duty of showing by the record, the pleadings, proceedings, and facts in the cause upon which its judgment is based.

V.

1. The record contains fifty-six assignments of error, on pages from 79 to 95, which were filed in the circuit court of the northern district of Georgia, on the 2d day of December, 1898, of which due and legal service was acknowledged by solicitors for the appellees, on the same day.

2. These assignments were based upon the entire record in the case of J. J. Robinson, trustee, against The Alabama and Georgia Manufacturing Company and William T. Huguley, defendants, and the collateral proceeding on the intervention, by petition, of the Huguley Manufacturing Company.

But the record in said cause, being case No. 360, in equity, on the docket of said circuit court, was not certified to the circuit court of appeals for the fifth circuit.

3. The assignments of error so made, and especially those numbered from XXV to LVI, both inclusive, went to the merits of the entire case and pointed out fatal defects in the equity of the original bill, which, for the want of indispensable parties to the suit, compelled the court in its decree of March 30, 1895, which was affirmed in the circuit court of appeals, to decree in favor of the trustee for the benefit of certain bondholders for whose benefit he prosecuted his complaint, and against other bondholders under the mortgage, none of whom were represented on the hearing or in the pleadings in the cause.

4. It appears from the decree of March 30, 1895, by necessary inference from the matters therein stated, that, in his

original bill. J. J. Robinson, as trustee, having no other right to a standing in court, pretended to represent the holders of all the mortgage bonds, 130 in number. The bill was filed in January, 1891, upon the ground that the non-payment of interest on the 130 bonds, which was due on July 1, 1890, made the principal of the bonds to fall due after six months from July 1, 1890.

5. In his haste to enforce his supposed authority, and evidently to sustain the effort of a *part* of the bondholders, whom he really represented, to capture the mortgaged property without reference to the rights of *other* bondholders, he proceeded with his suit, and when it was brought to a hearing, it was ascertained that the holders of 40 of the bonds, of the face value of $20,000, some of whom were dead and others were married women, to use the language of the decree in paragraph 2, they had "accepted the interest on said bonds, and by accepting them had waived the default, and the principal of said bonds, amounting to the aggregate sum of twenty thousand dollars, was *not* due and payable at the date of the filing of this suit, and that said trust deed *cannot* be foreclosed for the amount of said forty bonds."

6. This declaration of the court would necessarily have dismissed the bill, unless the cause was stopped and the bill was amended so as to bring in these bondholders as parties defendant to protect their rights in the mortgaged estate.

This presented at once a question of the jurisdiction of the court to proceed in the cause in the absence of indispensable parties, whose rights the court had ascertained and declared in its decree.

This question controlled all the subsequent proceedings in the cause, which proceedings further develop the fact that this was from the beginning an effort of some of the bondholders to use their power, as such, to force a sale of the mortgaged premises under conditions that would enable them to own the property, and either throw out the bonds they did not own, or control the price of them and buy them up on their own terms.

7. The following parts of the decree of March 30, 1895, were a basis for such plans, and the conduct of the "Galeton Cotton Mills" Company, a corporation organized by these select bondholders to hold and manage the property, was an adroit execution of these purposes.

8. In paragraph 3 of that decree "the court finds that the interest *was not accepted* on the remainder of the bonds, ninety in number, to wit (stating the number of each bond), and said default, as hereinbefore found to have occurred, was not waived and said trust deed can be foreclosed for the amount due on said ninety bonds, the principal due thereon being the sum of forty-five thousand dollars, with accrued interest." In paragraphs 4 and 5 of the decree the court names the owners of each class of the bonds issued under the mortgage, but does not state their citizenship or places of residence. The court finds the principal and interest due on the bonds and coupons of both classes up to November 1, 1894, which in the aggregate amounted to $85,457.16. The amount found due to the bondholders who had not accepted interest on their bonds was $62,005.92, and the amount due

to those who had accepted interest on their bonds before Robinson filed his bill was $23,451.24.

9. The court thereupon proceeds, in paragraph 6, to decree as follows:

"And it is further adjudged and decreed that the plaintiff do recover of and from the said Alabama and Georgia Manufacturing Company the said sum of forty-five thousand dollars principal and seventeen thousand and five and $\frac{92}{100}$ dollars for interest up to the 1st day of November, 1894, with all accruing interest from said date until paid, at 8 per cent. per annum and dollars as costs of this cause, the said sums to be satisfied out of the mortgaged premises hereinafter described, that is to say: All of a large island in the Chattahoochee river, designated as Island No. 6, containing one hundred and forty-three acres (143), more or less. Also Island No. 9, containing seven (7) acres, more or less. Also a small island between No. 6 and No. 9, upon which the east end of the factory building rests, containing four (4) acres, more or less. All of said three above-described islands being in the 20th district of Harris county, Georgia.

"Also a tract or parcel of land lying on the west side of the Chattahoochee river, opposite the above-described islands, bounded on the east by said river, beginning at a point on the west bank of said river, nearly opposite the center of the seven (7) acre island, at a black gum, at or near a place known as Sell's Corner; thence in a straight line to a point where the land owned in 1868 by Mrs. Freeman, Job Ross and James Campbell joins, known as the Ross and Freeman corner, to a pine stake; thence in a line to a branch near said stake; thence in a line down said branch to said river; thence down the western bank of said river to the beginning point, containing sixty-five and $\frac{23}{100}$ (65.23) acres, more or less, *lying and being in Chambers county, State of Alabama*, and

being a part of section twenty-eight and section twenty-nine (28 and 29) township twenty-one (21), range twenty-nine (29), as well as a forty (40) foot right of way from factory building to the public road from West Point, Georgia, to Berlin, Ala., at any point where the factory company may locate it, *including all tenements and improvements, including the cotton mill and machinery therein or thereto belonging, and all water privileges and riparian rights now or hereafter owned or enjoyed by said Alabama and Georgia Manufacturing Company.*"

10. In paragraph 7 of the decree—

"It is further ordered and decreed that the remainder of said bonds, to wit: forty in number, which are numbers set out in paragraph 2 of this decree, for the aggregate principal sum of twenty thousand (20,000) dollars, and for the sum of three thousand four hundred and fifty-one and $\frac{24}{100}$ dollars, interest thereon to November 1, 1894, were *not* due at the time of the filing of this suit, and said plaintiff, as trustee, is *not* entitled to recover therefor."

11. In paragraph 8, the equity of redemption is forever barred to the defendant corporation, and to every one claiming under or through it since the date of the execution of the trust deed or mortgage, to wit, the 2d day of January, 1884.

12. In paragraph 9 the decree directs the sale of the mortgaged property by Samuel C. Dunlap, who is appointed a commissioner for that purpose, on the 4th of June, 1895, "to the highest bidder," unless the $45,000 principal and $17,005.92 and all accruing interest thereon, at 8 per cent., and the costs of this cause are paid by the defendant company into court within thirty days from the date of the decree. If the purchaser should not represent a majority

in amount of the outstanding bonds of the company, the decree requires him to pay into the hands of the commissioner $10,000 to insure compliance with his bid in case the sale is confirmed. If a bondholder bids off the property "for or on behalf of the holders of a majority of the bondholders, in amount, then such purchaser shall not be required to pay more than $5,000 to the commissioner to cover costs, fees, and expenses of sale. If any bondholder bids off the property, he shall be entitled to pay the balance of the costs in and with the bonds of the company, whether the same have matured or not, "in the proportion and to the extent that such bonds would be entitled to share in the proceeds of sale if all the purchase-money was paid in cash."

13. Paragraph 11. "In case the property is sold and the proceeds *is* brought into court for distribution, then and in that event the bonds hereby decreed not to have matured at the time of the filing of this bill, which bonds are described in section 2, of this decree, are hereby entitled to share in the proceeds of said sale on distribution in amounts according to the findings of the special master, with all accruing interest and the holders and owners of said bonds may present them with the coupons attached for their proper *pro rata* share of said proceeds according to their tenor and effect."

14. Then follows this remarkable addendum:

"The court being of the opinion that the property decreed to be sold is *indivisible* and cannot be sold to satisfy that portion of the bonds which are hereby decreed to have matured, without destroying the value of the property as security for said bonds, and it further appearing that the defendant is insolvent and has ceased to do business: and

it further appearing that said bonds described in the 2d paragraph of this decree have become due since the filing of the bill by reason of the non-payment of interest."

15. The court in paragraph 12 of its decree reserves full control of the rights of purchasers under the decree and the right to make any further order or decree "in conformity with the general scope hereof" in respect of "the entries of credits on said bonds and the control of the same as shall appear proper on final distribution." As to those matters, and as to the costs in the court of appeals, the decree is not final, but it awards execution "for any balance of said sums hereby adjudged to be due which may remain after the sale of said property."

16. How far this decree is sustained by the pleadings in case "No. 360, in equity," of J. J. Robinson *et al. vs.* Alabama and Georgia Manufacturing Co. *et al.* is not shown by this record. On the face of the decree, the want of jurisdiction of the circuit court of Georgia to render it is manifest in at least three particulars:

1. That it disposes of the rights and securities that belong to the holders of forty bonds, amounting, without interest, to $20,000, who are excluded from any hearing in the cause and are afforded no opportunity to prove their claims and are indispensable parties to the suit.

2. That it decrees the sale of lands in Alabama, "including the cotton-mill plant located thereon," wholly without and beyond the limits of the jurisdiction of the circuit court of the northern district of Georgia.

3. That the court awarded execution against *all* the defendants in the cause "for any balance of said sums hereby adjudged to be due," without reference to the sums that were *not* due at the filing of the bill, and without reference to the decree, in the sixth paragraph, that the plaintiff "recover of and from the Alabama and Georgia Manufacturing Company," and not from any other defendant in the case, "the sums of $45,000 as principal and $17,005.92 interest up to the 1st day of November, 1894, with accruing interest on said principal from said date until paid, at 8 per cent. per annum," thus compounding the interest without lawful cause.

VI.

The date of the first decree in the record of this cause now before the Supreme Court is that of the decree of Newman, judge, set forth in the mandate of the circuit court of appeals, viz., March 30, 1895. In the last decree of Judge Newman in this case, on the 15th of October, 1898 (Record, pages 72–74) he refers to a sale of the property involved in this case which was made to *L. Lanier*, under a decree of 6th of September, 1892.

So that, in tracing the statement that this suit and all the proceedings in it were set on foot by a portion of the bondholders in order to capture this property and its great water power, which, it is insisted, appears from the course of proceedings in this cause, and is contested by petitions and answers, motions, exceptions, and assignments of error that appear of record in all its stages, it is indispensable that the entire record in the case should be brought before this honorable court.

The proceedings in this cause since March 30, 1895, are correctly stated, with the exceptions noted in this statement, and prior to said date they are correctly stated in the certified transcript submitted with the appellants' motion for a certiorari to perfect the record, with some omissions that are accounted for in the stipulation of counsel (Record, pages 5, 6), which is hereinafter explained.

VII.

1. The assignments of error on pages 79 to 95, inclusive, on the record sent up to the Supreme Court and certified on the 15th of May, 1901, and the assignment of errors on pages 62 to 65 of the record certified on the 6th day of October, 1899, submitted to the court, apply to the phases of the case in which the appellants believe that errors were committed in said cause in the circuit court, in the progress thereof.

2. Until the entire record in this case is before the Supreme Court, the appellants cannot properly assign the errors in the judgments of the circuit court of appeals that affirmed the several judgments of the circuit court of the northern district of Georgia in this case, and support the assignments by the record.

3. On the partial record now before the court enough appears to sustain the statement that the powers and process of the circuit court of the northern district of Georgia have been used and unlawfully abused by the corporation called the Galeton Cotton Mills and by the persons who organized the same for the purpose of obtaining the title and possession of the mortgaged property, which is the essential

subject-matter of this suit. This is shown in the following proceedings in connection with what is hereinabove stated, viz: In the decree of March 30, 1895, the court appointed Samuel C. Dunlap a commissioner to sell the mortgaged property at public sale, and give to those persons who organized the Galeton Cotton Mills such advantages in the payment of their bid for this great property that no other bondholders and no outsiders could successfully compete in bidding for the purchase of the property, the actual value of which was far in excess of the bonded debt secured by the mortgage.

4. The property was sold by the commissioner, against the petition and remonstrance of the Huguley Manufacturing Company, on the first Tuesday in May, 1896, and "the same was bid off by L. Lanier, representing, as he *claimed*, a majority of the bondholders of said defendant company, for the sum of $66,000."

Of this sum there was paid for advertising the property $46.97; commissioner's fees for selling it, $200, and $4,753.03 in the hands of the commissioner, and the balance, $61,000, "in the hands of the purchaser uncollected" (Record, page 20).

5. In the decree of the circuit court of 15th of October, 1898 (Record, pages 72–74), it is stated that "on the 6th of September, 1892, L. Lanier *et al.*, for and on behalf of the bondholders bid in said property at and for the sum of $10,000 and paid into court on said purchase the sum of $10,000, which sum was distributed under and by order of this court

before any notice of appeal was given, and before any reversal of the decree under which said sale was made."

6. L. Lanier is the same person who bought the property in 1892, and he bought it for persons who were the corporators, organizers, and owners of the stock in the Galeton Cotton Mills, and they took possession of the property under that sale and have held it from that time to this. But it is an error which the record proves, that Lanier bought the property for $10,000. He bid it in for $66,000 at that sale and for the same sum at the sale on the 6th of May, 1896.

7. On the 1st of May, 1896, the Alabama and Georgia Manufacturing Company and The Huguley Manufacturing Company petitioned the court for a postponement of the sale for 60 days, under the decree of March 30, 1895. The petition is verified by oath, and is also verified by the record in the cause, and presents a very strong case. (Record, pages 16–18.) On the 2d of May the court refused the petition.

On the 7th of May, 1896, Samuel C. Dunlap filed his report of the sale of the property, under the decree of the court, in which he says:

"And on the first Tuesday in May, 1896, I sold said property at public outcry before the court-house door in the town of Hamilton, in Harris county, in said district, it being the county in which said property is located, when the same was bid off by L. Lanier, representing a majority of the bondholders of said defendant company, at and for the sum of $66,000. The said purchaser paid over to me at the time and place of the sale the sum of five thousand dollars, as required by the terms of the decree, for which he holds my receipt."

8. On the 27th of May, 1896, L. Lanier presented his petition for the confirmation of said sale, in which he states "that your petitioner, for and on behalf of the holders of the bonds of the Alabama and Georgia Manufacturing Company, bid off said property at and for the sum of 66,000 dollars; that he paid into the hands of said commissioner on the spot the sum of 5,000 dollars, as in said decree provided for. Petitioner is ready to surrender the bonds of said company in payment of the balance of the purchase-money, on confirmation of the sale, all of the bonds being legally or equitably the property of your petitioner and his associates and under their control."

9. Under an order of court made on the 27th of May, 1896, the defendants in the suit were required to show cause before the judge on the 30th of May, why it should not be granted. The defendants filed their answers to the petition, and on the 25th of June, 1896, the court rendered a decree on the petition (Record, pages 24, 25), in which is the following:

"It is ordered, adjudged and decreed that said sale be, and the same is, hereby confirmed in all respects, and the said Samuel C. Dunlap, as such commissioner, be and he is hereby authorized and directed to convey to *said purchasers named*, all and singular the property and the property rights of every description described in said decree, *upon the purchaser complying with the terms of said sale.* * * * And the court retains and reserves the right to seize and order a sale of said property for the purpose of satisfying any such *balance* so found to be due as hereinbefore set out, and the title shall be made by said commissioner to the purchaser *subject to this provision.*"

10. This *balance* relates to a demand for rents claimed by the Huguley Manufacturing Company from the Galeton Cotton Mills. This supposed balance was disposed of in the decree of the court, rendered October 15, 1898 (Record, pages 72–74), and there was ordered to be made to the purchaser, *L. Lanier*, or to "such person as *he* may designate, a deed to the property sold, and the purchaser shall thereupon be vested with a good and clear title to said property, as of the date of sale, and with the same effect in all respects as to all persons whatsoever, as if said sale had been completed and the property conveyed to him upon the date thereof, May 5, 1896."

This decree cleared off the only qualification in the decree of June 25, 1896, that could in any event affect the title to the property sold on the first Tuesday in May, 1896. That sale was made under the decree of March 30, 1895, which had been affirmed in the circuit court of appeals, on which judgment the mandate of the appellate court issued on the 25th of February, 1895, and on the 10th of March, 1896, the circuit court "ordered that the mandate from said circuit court of appeals be entered on the minutes of this court in said cause stated, and that in accordance with the judgment of the court of appeals the said final decree of this court stand affirmed."

11. This solemnization of the previous proceedings in the cause connected this second sale of the property and its purchase by the Galeton Cotton Mills, with the sale on the 6th of September, 1892, under a decree that was reversed, and it was intended to legalize that sale, and for that reason it was so arranged in the decree of March 30, 1895, that no one

would or could purchase the property except the bondholders represented by L. Lanier, who comprised the Galeton Cotton Mills Company.

12. In his opinion and decree of 11th of April, 1898, Judge Newman says:

"A decree was rendered foreclosing the mortgage, in the circuit court, which was reversed in the circuit court of appeals, not because of any error in the decision of the circuit court that complainant was entitled to foreclosure, but on the ground that there had been no accounting as to the bonds on which the interest had been paid, and those on which the interest had not been paid." "In the meantime and pending the appeal, the property had been sold and had been bought in for the bondholders by a committee representing their interests."

This conspicuous error in the statement that *all* the bondholders were represented by a committee in making that purchase, is contradicted by the decree of March 30, 1895; yet it is repeated in the decree of April 11, 1898, as follows:

"Motion is now made by the purchasers who, as stated, are the *bondholders*, to set off the amount found for rents and profits during the time of their possession between the two sales against the amount of the deficiency decree. This is resisted by the Huguley Manufacturing Company. It is claiming the rents and profits, and that is the question now presented for determination" (Record, page 56).

13. This statement of the court is an error of fact that is contradicted by the entire record relating to the sales of the property under the decrees of the circuit court. Judge

Shelby, in delivering the opinion of the court of appeals in this case, fell into the same error of fact and adopted it.

14. Judge Shelby also decided in that opinion and judgment of affirmance that "on January 1, 1894, the Alabama and Georgia Manufacturing Company executed a mortgage or deed of trust to J. J. Robinson and two others to secure $65,000 of bonds issued by it that day.

"Subsequently the property embraced in the mortgage was sold under a decree of a State court subject to the mortgage.

"Under this sale the Huguley Manufacturing Company became the purchaser and owner of the property, subject to the incumbrance of the mortgage, for $65,000. It was placed in possession of the property."

This ascertainment of the rights of the Huguley Manufacturing Company and the lawfulness of their possession of the property sufficiently settles those points for the purposes of this motion.

15. After the affirmance of the decree of March 30, 1895, the question of the sale of the property and the compliance with the terms and conditions of the sale as prescribed in that decree concerned *all* of the bondholders, as well those who were therein provided for as those that were excluded.

16. The exceptions taken to the master's report in this case (Mr. Felder) show that it was grossly erroneous in favor of the Galeton Cotton Mills as to the amount of rents and profits received by that company during its possession of three years and eight months. Yet he found that, after many strained allowances, they were indebted to the Galeton Cotton Mills in the sum of $39,713.51, of which sum $3,391.04

was for property converted September 6, 1892, and interest thereon.

Even assuming the basis of the master's award, a property that brought a net income of $10,000 a year was a good security for a mortgage debt of $65,000, and all the bondholders had the right to expect full payment of their bonds and interest from its proceeds.

17. After the decree of March 30, 1895, the controversy was between the Galeton Cotton Mills and the Huguley Manufacturing Company as to the rents and profits of the property, and between both those companies and the bondholders as to the application of the rents and profits to the mortgage debt.

On this controversy, the Galeton Cotton Mills, which is a syndicate of certain bondholders, represented those of the bondholders that owned that company, and the other bondholders were not represented.

18. The assignments of error touching this triangular, or quadrangular, contest, on pages 79 to 95 of the record now before the court and on pages 62 to 64 of the more complete record now submitted to the court by appellants, relate chiefly to controversies arising out of the sales of this mortgaged estate and the rents and profits thereof, and it is essential to a proper understanding of this case that the principal features of those proceedings should be separately stated. When the record is completed, the appellants will ask leave of the court to make additional assignments of errors.

VIII.

Proceedings under the Decree of March 30, 1895, as shown by the Record now before the Supreme Court.

1. Without stating the proceedings on the motion of the Huguley Manufacturing Company to be reinstated in the possession of the mortgaged property, which antedate the decree of March 30, 1895, it appears that on the 10th of March, 1896, the Alabama and Georgia Manufacturing Company and the Huguley Manufacturing Company moved the court for a reference to a master to take an account of the rents and profits of the mortgaged property in the possession of a part of the bondholders, and pointed out the bondholders who were and those who were not members of the Galeton Cotton Mills Company. On the 16th of March, 1896, the court made an order of reference for that purpose to Thomas B. Felder.

2. On May 1, 1896, the defendants in the cause filed a petition asking the postponement of the sale of the property for at least sixty days until the special master, Felder, could have time to ascertain the amount due from those of the bondholders who are in possession of the mortgaged property.

The petition represented that the property was about to be sacrificed by the sale.

On May 2 the petition was refused (Record, page 19).

On the 7th of May, 1896, Samuel C. Dunlap reported the sale of the property and its purchase by L. Lanier, *representing a majority of the bondholders of said defendant company.*

On the 27th of May, 1897, L. Lanier petitioned the court for the confirmation of the sale of the property, stating "that your petitioner, *for and on behalf of the holders of the bonds* of the Alabama and Georgia Manufacturing Company, bid off said property at and for the sum of $66,000.00; that he paid into the hands of said commissioner on the spot the sum of $5,000.00, as in said decree provided for; petitioner is ready to surrender the bonds of said company in payment of the balance of the purchase-money on confirmation of the sale, all of said bonds being legally or equitably the property of your petitioner and his associates and under their control."

3. This petition was contested by the defendants in the suit and was granted by the court June 25, 1896 (Record pages 21 to 25).

Thomas B. Felder, special master, filed his report on the 9th of October, 1897, under the decree of the court rendered 16th of March, 1896, as to rents and profits, damages, &c., in which he awarded to the "movant" against The Galeton Cotton Mills $39,713.51.

The Galeton Cotton Mills and J. J. Robinson filed exceptions to that report on certain grounds, and the Huguley Manufacturing Company filed separate exceptions on other grounds.

4. The court decided these exceptions in a decree rendered 23d of February, 1898 (Record, pages 46 to 53).

5. In the decrees that follow (on pages 55 to 66 of the Record), dated April 11, 1898, and April 26, 1898 (Record, page 63), and June 4, 1898 (Record, pages 64 to 67), the court

makes further disposition of the $39,713.51, above mentioned, as follows:

(*a.*) In the decree of February 23, 1898, the court reduces the amount of rents and profits charged against the Galeton Cotton Mills ($39,713.51) by the allowance to them of the sum of $3,502.52 for insurance premiums paid on the mortgaged property and on the cotton used and the stuff manufactured by them while they were in possession of the property, thereby reducing the sum due for rents and profits to $35,857.54.

(*b.*) In the decree of April 11, 1898, the court refused to decree this balance to the Huguley Manufacturing Company as rents and profits due to them. As to the application of this sum to the mortgage debt the court said:

"It seems to me beyond question that the purchasers were entitled to have this amount applied to the balance of their debt."

(*c.*) "Their debt" was "the deficiency" decree for which execution was awarded in the thirteenth paragraph of the decree of the 30th of March, 1895.

6. By this decree the sum of $35,857.54 was swept into the pockets of the bondholders who owned the Galeton Cotton Mills Company, and who are the same who are provided for by a special decree of foreclosure in paragraph 5 of the decree of March 30, 1895, and by especial privileges as bidders at the sale of the property in paragraphs 9 and 10 of said decree.

7. Until the case had progressed to the point of applying the rents and profits of the property to the benefit of this syndicate or combination, the real purpose and effect of that decree did not appear.

It was to give the Galeton Cotton Mills a preference over all other bondholders in the decree of foreclosure and in a money decree, with execution for the amount of the bonds held by them, with interest at 8 per cent. from March 30, 1895, thereby compounding the interest, and a privilege over all others in the terms of purchasing the property, of which they availed themselves, and also a decree that forced the sale *before* the master could take an account of the rents and profits of the mortgaged property in the possession of the purchaser, the Galeton Cotton Mills, alias the bond syndicate, and a confirmation of that sale on the 25th of June, 1896, *before* the master made or could make his report.

8. They thus got the title to the property, *freed from every incumbrance* and with the equity of redemption barred, on the false statement in the petition of L. Lanier, of May 27, 1896, that "petitioner is ready to surrender the bonds of said company in payment of the balance of the purchase-money on confirmation of the sale, all of the bonds being legally or equitably the property of your petitioner and his associates and under their control" (Record, page 20).

9. The falsity of this statement is shown by the fact that after the confirmation of the sale the bonds were not produced in court and to this day have not been proven or

surrendered or canceled. There is not even a copy of a bond in the entire record. That these statements were false is further shown by the recitals in the decree of the court on October 15, 1898, as follows:

"*And it appearing that owing to the delay in the determination of the questions submitted to the special master, it has been impracticable to pay for said property in bonds of the Alabama and Georgia Manufacturing Company, as provided in the decree of foreclosure,* AND WHEREAS THE SAID HUGULEY MANUFACTURING COMPANY HAS GIVEN NOTICE OF AN INTENDED APPEAL OF SAID CAUSE TO THE CIRCUIT COURT OF APPEALS, WHICH WILL RENDER IT IMPRACTICABLE UNDER SUCH NOTICE TO ASCERTAIN DEFINITELY TO WHAT EXTENT THE BONDS OF THE ALABAMA AND GEORGIA MANUFACTURING COMPANY COULD BE USED FOR THE PURPOSE OF PAYING THE PURCHASE-MONEY AS PROVIDED IN SAID ORIGINAL DECREE, AND THIS COURT BEING OF THE OPINION THAT IT IS FOR THE BEST INTERESTS OF ALL THAT THE PROPERTY SHOULD BE SETTLED FOR BY THE PURCHASER AND A FULL AND COMPLETE TITLE BE MADE BY THE COMMISSIONER TO SAID PURCHASER, OR TO SUCH PERSON AS HE MAY DIRECT, FREE FROM ALL LIENS, CLAIMS AND DEMANDS IN FAVOR OF ANY PERSON OR CORPORATION, PARTY TO THIS RECORD.

"And it further appearing that the said Huguley Manufacturing Company has failed to obtain any decree in the cause which could be operative as against the property under said decree of confirmation, it is therefore ordered that the decree of confirmation *be modified with respect to the provisions fixing a lien on the property in favor of the Huguley Manufacturing Company* as to any amount it might ultimately be decreed to be entitled to, and that the before-recited provisions of *said decree of confirmation be* set aside, and whatever rights the said Huguley Manufacturing Company may hereafter have, or may hereafter be adjudged to have, *be transferred to the net proceeds of the sale of the prop-*

erty, to be paid into the registry of this court as hereinafter specified."

10. The decree of confirmation mentioned and "modified" was rendered on the 25th of June, 1896, before the special master, Felder, had made his report in this case awarding to the Huguley Manufacturing Company $2,500 (Record, page 25), and it was followed up and made a lien on the property, after exceptions to its allowance were overruled in the decree of the court of June 4, 1898, paragraph 6 (Record, page 66), as follows:

"It is further decreed that the sum recovered by the Huguley Manufacturing Company, to wit, $2,500.00, principal, and $89.04, interest, *the same being for supplies and findings* is hereby taxed with the sum of $750.00, the same being the proper share of the costs taxable against the said Huguley Manufacturing Company as against the special finding in its favor for the balance of said special finding, after deducting the said sum of $750.00, *the same to be a lien on the mortgaged property* in the hands of the purchaser."

So that this lien still exists under that decree, notwithstanding the modification of the decree of confirmation mentioned in the decree of October 15, 1898. This item in Felder's report was for property converted by the Galeton Cotton Mills that was not included in the mortgage.

11. The excuse for the violation of the decree of March 30, 1895, which was affirmed by the circuit court of appeals and was beyond the power of the circuit court to modify or change or to lawfully disregard it, and for the total departure from its provisions in the proceedings to sell the property, and the requirement of a cash payment for the property,

instead of a payment in bonds, is a painful illustration of the uncertainty of judicial proceedings in some cases and of the disloyalty of some inferior courts to the rulings and mandates of the superior courts.

12. The property sold for $66,000 as of the date of May 5, 1896. Add to this the sum of $35,857.54, the amount awarded to the complainant against the Galeton Cotton Mills for the rents, profits, and interest, and the yield of the entire estate is $101,857.

Of this sum there was paid into court on the first sale	$10,000
On the second sale	4,898
	$14,898

And this is all the money that was paid into court.

The haste in distributing this money to costs, lawyers' fees, and bondholders who were dangerously importunate does not seem becoming to sedate justice.

13. By the decree of June 4, 1898, the sum of $65,753.03, net, was applied to the bond indebtedness.

The costs, expenses, and attorneys' fees allowed by the court in that decree were as follows:

Costs in the case, balance	$182.00
Fees of Felder, special master	2,500.00
Fees of Julius L. Brown, special master	375.00
Fees of A. E. Buck, special commissioner	400.00
To A. S. Waldo	200.00
To J. J. Robinson, trustee	500.00

To D. O. Smith, stenographer	$875.00
Costs of advertising and commissions	372.00
Court costs	230.00
Award to Huguley Manufacturing Co	1,750.00

Fees to Attorneys.

Dorsey, Brewster & Howell	1,000.00
Dorsey, Brewster & Howell	3,500.00
B. F. Abbott	3,500.00
Abbott & Smith	1,000.00
To N. D. Denson	600.00
To B. F. Abbott, paid by Dunlap	2,000.00
	$18,544.00
Amount applied to debt	65,753.03
	$84,297.03

14. *At least 90 per cent. of these costs and fees were occasioned by the resistance of the Galeton Cotton Mills to the payment of rents and profits and to their effort to capture the title to the property under forced sales with great advantages to them in the biddings.*

15. In the decree of June 4, 1898, from which the foregoing items are taken, is the following: "3. It being made to appear that the mortgage indebtedness at the date of the sale" (by Dunlap) "was the sum of sixty-five thousand dollars principal, and thirty thousand seven hundred and $\frac{1}{100}$ dollars interest, the said sum of sixty-five thousand seven hundred and fifty-three and $\frac{3}{100}$ dollars is hereby applied to said indebtedness as follows," setting forth the items.

16. This application of purchase-money to the indebtedness of the Alabama and Georgia Manufacturing Company canceled that amount of bonds in the hands of Lanier and his associates, if he held them, *but he did not hold or own them*, as is shown by the subsequent decree of October 15, 1898 (Record, page 73).

17. The date of the sale of the property, when the title passed to the purchaser, is in law and justice the proper date for the settlement of the rights of the bondholders and the mortgagor, and the date of the sale and the conveyance of the property relate to the 5th day of May, 1896, by the decree of 15th of October, 1898 (Record, page 72), which was rendered 2 years 5 months and 10 days after the sale was made. *This delay had the effect to give the rental for that period to the Galeton Cotton Mills.*

18. The special master, Felder, charged against the Galeton Cotton Mills the rents and profits to April 30, 1896, five days before the property was sold to them. The balance against that incorporated syndicate of bondholders was $39,713.51, on which he computed interest at 7 per cent. to October 7, 1897, the date of his report. In the meantime the debt of the mortgagor, on which interest was compounded in the decree of foreclosure, March 30, 1895, was bearing interest at 8 per cent. after it had once been compounded.

19. In the decree of the court, upon exceptions to Felder's report, February 23, 1898, the above-stated balance was reduced to $35,857.54 (Record, page 53). In the decree of April 11, 1898 (Record, page 56), this balance is again stated as being $35,857.53.

20. The Huguley Manufacturing Company claimed that balance, and their petition was refused in that decree.

21. Then the Huguley Manufacturing Company moved the court to apply these rents and profits as credits on the bonded debt held by the Galeton Cotton Mills, at a date intermediate between the first and second sales, and the court refused the motion on the 26th of April, 1898 (Record, page 63).

22. Then, on motion of Robinson, trustee, and the Galeton Cotton Mills, the court proceeded, on June 4, 1898, "to apply the net proceeds of amount of rents, issues and profits to the mortgage debt," which was done as follows:

The amount, net, of the sale by Dunlap was stated to be	$65,753.03
The debt of the mortgagor is stated at $65,000 principal and $30,712.01 interest	95,712.01

The interest was to be first paid, amounting to $30,712.01, and that payment was to date on April 6, 1896.

23. This was an error of $10,087.18. The debt, as it is stated in the decree of March 30, 1895, with the interest then due upon it, was as follows:

Debt then matured	$45,000.00
Interest to date of decree	17,005.92
Debt not then matured	20,000.00
Interest to date of decree	3,451.24
	$85,457.16

The interest on this entire sum, with interest computed on interest allowed in the decree of March 30, 1895, being three years and sixty-four days, at 8 per cent., is $20,624.83.

24. In the decree of February 28, 1898, the sum due to the Huguley Manufacturing Company for findings, &c., was allowed (Record, page 54) for $3,391.04, including interest at 7 per cent. to October 9, 1897, average date, and a decree was rendered against the Galeton Cotton Mills for $35,857.54 after deducting that sum, and in the decree of April 11, 1898 (Record, page 60), this sum was applied to the mortgage debt and interest.

25. In the decree of June 4, 1898 (Record, page 64), the sum of $3,391.04 decreed to the Huguley Manufacturing Company is again deducted from the sum so decreed against the Galeton Cotton Mills, viz., $35,857.54, leaving the balance due from said Galeton Cotton Mills $32,466.50 for principal and interest to 9th of October, 1897, thus changing entirely the former decrees without correcting or overruling them and without the statement of any reason for such change in the rights and obligations of the parties.

26. A very unintelligible account is stated by Felder, special master, on page 37 of the record, but he fixed the point of settlement at April 30, 1896, which was four days before the sale of the property, considering that as the date at which the law would require settlement to be made. He therefore charged the Galeton Cotton Mills with rents and profits up to April 30, 1896—three years and eight months—a sum that the court reduced to $35,857.54, show-

ing a net profit of over $8,000 per annum, and that the property was worth at least twice the amount of the mortgage debt.

27. From April 30, 1896, to the decree of the application of the proceeds of the property to the mortgage debt, on June 4, 1898, no rent, income, or profits of the mortgaged property have been accounted for, nor have such rents, profits, or income since been accounted for, but the balance found due by the master, as of April 30, 1896, has stood as the only sum for which the Galeton Cotton Mills are liable, and that has been reduced by the court from time to time until it has fallen from $35,857, in February, 1898, to $32,446.50, on June 4, 1898.

28. During all that time the Galeton Cotton Mills have held possession of property worth, upon said basis, a net profit of more than $8,000 per annum, for which they held no title until the 15th of October, 1899.

From the 30th of April, 1896, until the 15th of October, 1898, a period of two years and six months, they have held possession of the property, which must have been worth, in same proportion, net profits, $20,000, with no other accountability than the payment of interest at 7 per cent. on a debt they owed the plaintiffs, amounting now to $32,446.50.

29. Thus the case proceeded, against objection, and the interest at 8 per cent. on the bonds, compounded March 30, 1895, and again the 30th of April, 1896, against the interest on $32,446.50, at 7 per cent., to represent the rents of property that yielded, net, more than the interest at 8 per cent on $100,000.

30. At that rate the interest on the bonds held by th syndicate would soon extinguish the debt they owed for th income and profits of the property, up to April 3, 1896; bu they had acquired possession of the property, and it wa greatly to their interest that they should postpone the set tlement so long as they were paying no rental for it.

31. On the motion of the Galeton Cotton Mills the appli cation of the purchase-money to the bonds was postponec (Record, page 25).

32. This demand for delay was, manifestly, in conse quence of a fraud upon the court, practised by L. Lanie when he stated to the court, on the 27th of May, 189 (Record, page 20), that—

"Petitioner is ready to surrender the bonds of said com pany in payment of the balance of the purchase-money, or confirmation of the sale, all of said bonds being legally or equitably the property of your petitioner and his associates and under their control."

In paragraph 7 of the decree of June 4, 1898, more than two years after this false representation was made, on mo tion of the Galeton Cotton Mills—

"It is further decreed that if any of the bondholders should elect not to join in the purchase of the property, such bond holder shall be entitled to receive the percentage to which said bonds shall be entitled on distribution, subject, of course, to any payments that may have been made on the same on former sale of the property and subject to all proper taxation for costs and fees and other proper adjustment according to the scope of this decree. And the purchaser shall pay into court sufficient money to settle with the bondholders who

do not join in the purchase if any such shall be necessary" (Record, pages 66 and 67).

33. No predicate of fact or even of suggestion is found in the record for this part of the decree. Why it should have been made can only be conjectured, except for what is stated in paragraph 10 of the decree, as follows:

"*It is also represented that $65,000.00 of bonds of the Galeton Cotton Mills were issued for the purpose of taking the place of a similar amount of bonds of the Alabama and Georgia Manufacturing Company, and that the purchasers of the property either paid the interest on the bonds or procured it to be paid for several years. The right of the purchaser or such other person to be reimbursed out of the proceeds of said property before any distribution is made is reserved for future decree.*"

34. The eighth paragraph of the decree of June 4, 1898, shows that these bonds of the Alabama and Georgia Manufacturing Company had been the subject of traffic, and that the ownership of them changed, *lis pendens*, and that the money paid upon the purchase of the mortgaged property did not belong to the Galeton Cotton Millls, "and the original holders of said bonds are not entitled to receive any percentage on said bonds, until after the amount so advanced is repaid to the person advancing it."

35. These family troubles lingered, and delayed "the course of justice" until L. Lanier was compelled to seek the mercy of the court to free him from the decree he had obtained on the 25th of June, 1896, confirming the sale of the property and declaring "that the provisions and directions of said decree (of sale) were in all respects complied with."

36. To get this indulgence he petitioned the court to decree *him* an absolute title to the property, the deed to be made to him "as trustee, or to such person or persons as he may direct," "on your petitioner complying with the decree in said case *by paying into the court enough money as may be necessary to pay all expenses, fees, costs, and such bondholders as may decline to turn in their bonds as payment on the purchase, and require payment of what is allotted to each.*"

37. In this petition he starts out with a false statement in saying as follows:

"And at said sale your petitioner represented such of the bondholders as were living to join in said purchase at said sale." He stated in that petition that he represented all of the bondholders and did not say or suggest that any of them were dead. He then proceeds to say:

"Your petitioner further shows that *quite a number* of the bondholders are now unwilling to join in the purchase of said property, but are insisting on taking their per cent. of the proceeds going to the bondholders in cash and are unwilling to furnish the necessary cash to comply with said decree, and your petitioner will therefore be compelled to raise the money to pay expenses, costs, fees, and those bondholders who require cash in the distribution."

38. The decree on this petition (Record, pages 72–74) either substitutes L. Lanier as the purchaser of the property in his *personal* right, thereby changing the whole character and purpose of the sale, or it enables the Galeton Cotton Mills to acquire the property without having paid into court the sum of $32,000 decreed against it on the 4th day of June, 1898, and in both cases making the title relate back to the 6th day

of May, 1896, thereby giving to that company the rentals and profits from that date until the 15th of October, 1898.

39. In the decree of June 4, 1898, the mortgage debt is found by the court to be $65,000 principal and $30,712.01 interest—total, $95,712.01—to which is applied $65,000 of bonds and $32,466.50 due from the Galeton Cotton Mills—$97,466.50—and the balance is applied to costs and fees of counsel, leaving a large deficiency, of which more than $5,000 is charged to the bondholders. It transfers to the fund in court, when the $48,433.36, the balance of the purchase-money is paid, the debt due from the Galeton Cotton Mills to the Huguley Manufacturing Company, for about $1,700, after taxing it with $891.04 costs, which debt had been made a lien on the property.

The decree of March 30, 1895, is utterly lost in this contradiction and confusion of decrees.

IX.

1. The fatal error of proceeding in this cause without the indispensable parties, the bondholders, whom Robinson, the trustee, did *not* represent, and who refused to follow him in the scheme of placing the title to this property in the Galeton Cotton Mills syndicate, has produced much of the embarrassment, loss, and vast expense of this litigation.

2. If Huguley or the Huguley Manufacturing Company, whose officers were the same with the Alabama and Georgia Manufacturing Company, were interested adversely to the bondholders, and the Galeton Cotton Mills represented those bondholders who got the decree of foreclosure on the

30th of March, 1895, it was impossible in a court of chancery to proceed with the case until they were made parties to the suit.

3. The result has been that while no one disputed the right of all the bondholders to the satisfaction of their debts out of the mortgaged property, and the trustees in the deed had the power of sale, and it was their duty to sell the property on the demand of any bondholder, in case of default, they have been drawn into a litigation that has already continued for ten years, and are taxed enormously with costs and lawyers' fees, and have now no other rights secured to them than the right to litigate for a share of the $48,433.36, which the court, in its decree of October 15, 1898 (Record, page 73), has ordered to be paid into the registry of the court.

4. They were deprived of an investment of their money at 8 per cent. that was perfectly secured and on which the interest was duly paid them, and forced to crowd a faithful debtor to ruin, in order to put it in the power of Lanier and those who joined him to force the sale of a splendid property that was earning good dividends and was kept in a good state of repair. They refused to do this, and when Lanier came to the end of his program he found himself deserted by other bondholders, who refused to unite in paying for the property he had bought by giving him control of their bonds. His own consorts required cash for the bonds at the end of the campaign, and in order to get it he had to ask the court to reverse its own decrees and the decree of the circuit court of appeals, and to turn over the property

by deed to *his* appointee, to use it as he might choose in getting the money to pay them.

5. As none of the bondholders are parties to the suit and many repudiate Lanier's trusteeship, the court had no power to control them except by judicial pressure, of which there is a startling example in the seventh and eighth paragraphs of the decree of June 4, 1898 (Record, page 66), and in the entire decree of October 15, 1898.

X.

Argument of the Points of Law Touching the Certiorari, the Appeal, and the Power of the Court to Review the Entire Proceedings in this Case, and the Assignment of Errors on the Record.

1. The foregoing statement of the history of this case, as it is shown by the recitals of facts in the opinions of the judges of the circuit court and of the circuit court of appeals, and by a part of the other records in this case, applies to the motion for certiorari and the other motions submitted in this cause, and also the appeal in this cause, and to any further order or decree that this honorable court may make in the case.

2. The writ of certiorari is the most comprehensive of the processes by which appellate courts take cognizance of the records of inferior courts in cases that involve appellate jurisdiction and the powers of supervision and correction.

It is the writ of the court, and can only be issued by order of the superior jurisdiction.

A party to a suit asking a writ of certiorari to complete or correct a record sent to the Supreme Court must satisfy the court, by affidavit or other proofs, that the application is well founded, and that it is not made for delay.

If it is well founded and has not been purposely delayed, it should be granted, even if greater diligence might have sooner brought the defect in the record to the attention of the court; and this seems to be a proper construction of rule 14.

3. In this case the difficulty had its origin in defects in the record of the circuit court of appeals, which show contradictions in the minutes of the circuit court of appeals between the docket numbers of the case, as stated by the circuit court of appeals in the caption of its opinion and decree, and the judgment entry on the minutes. Which number is correct is not within the knowledge of the appellants; but, whichever of the numbers may be correct, the other must be corrected by the court in whose record the error exists, for the reason that the identity between the respective records is not capable of being proven by the correspondence of the titles of the causes, which is not substantially exact, and there is no other fact in the record by which the correct number or title of the cause can be established.

It is therefore submitted that until a complete record is certified to the Supreme Court it cannot be decided whether the necessary correction can be made by the Supreme Court or must be made by the circuit court of appeals.

4. The record certified to the Supreme Court by the clerk of the circuit court of appeals on the 15th of May, 1900, upon its face shows that it is incomplete.

Many parts of that record, and especially the matters stated and the facts found in the opinions of the circuit court and in the opinion of the circuit court of appeals, show that only a part of the record in the case is in the transcript filed June 25, 1900.

5. The appellants produce and submit to the court a transcript from the records of the circuit court of appeals, certified by the clerk of said court on the 6th day of October, 1899, which they insist is a record of the proceedings of the circuit court for the northern district of Georgia in the cause in which this appeal is taken, and that it presents the record of said circuit court on which said appeal was heard in the circuit court of appeals for the fifth circuit, on the 17th, 18th, and 19th days of May, 1899.

6. No record is found in either of these transcripts of a certificate of the clerk of the circuit court of the northern district of Georgia, which identifies the record of the case, and the circuit court of appeals has not caused any statement to be made of the papers or proofs on which this case was heard in the circuit court of appeals.

7. This uncertainty has resulted apparently from the failure of the circuit court of appeals to require the identification of the papers in two former appeals in this case in said court, which papers were referred to on the hearing of the appeal taken by appellants and allowed by Newman, circuit judge, on the 2d of December, 1898, under an agreement of counsel that "either party, on the hearing of this appeal, may be at liberty to refer to any such parts of the

record of said former appeals, or either of them, as they may see proper."

8. If the judgment of the circuit court of appeals is held to be a valid judicial act upon the record as it is now certified to the Supreme Court, and if the writ of certiorari to complete the record is denied, the appellants respectfully insist that the incomplete state of the record does not affect the validity of the appeal, since if it is a valid judgment or decree, errors can be assigned upon the record that supports it, and the Supreme Court has jurisdiction to consider the same. If it is invalid, that declaration reverses and annuls it.

XI.

On this record, as now presented to this court, the appellants insist as follows:

1. That all the proceedings in the circuit court set forth in the record are open to the judicial power of the Supreme Court to correct the same where they are in error, without reference to the date of any decree or any order to which exception was duly taken, and that the affirmance or the reversal by the circuit court of appeals of any order or decree of the circuit court of the northern district of Georgia in this case is open to correction by the Supreme Court; and that the jurisdiction of the Supreme Court reaches to the entire case from the beginning, and errors may be properly assigned upon any part of the record, unless the same have been waived.

2. That it appears from the record in this case that there is no equity in a decree, or in a bill on which a decree can be based, that asserts the judicial authority to decree the foreclosure of the mortgage described in the decree of the 30th of March, 1895, in favor of the trustee therein, for the benefit of the holders of 90 bonds out of 130 secured by the mortgage, and that also refuses the benefits of such foreclosure and of a recovery upon the other 40 bonds, in the manner stated in said decree.

3. That it appears from said decree that the bondholders against whom it makes such radical discriminations, are necessary parties to the suit, and that no valid judgment or decree can be made in the case in their absence as parties to the suit.

4. That it appears from said decree that the larger part of the property directed to be sold under it, and that was sold under it, is situate within the limits of the State of *Alabama* and is not within the limits of the jurisdiction of the circuit court of the northern district of Georgia, and that the decree is erroneous for the want of jurisdiction in said court to render the same.

5. That in the proceedings subsequent to said decree and based upon it, after it was affirmed in the circuit court of appeals, the circuit court violated and disregarded the mandate of said court in the sale of the property and in the distribution of the proceeds of such sale, and in its decrees touching the rents and profits of said property.

6. The foregoing questions relate to the exercise of the jurisdiction of the court and its conduct of a case in its progress, which are matters that concern the due, proper, and lawful administration of justice, that are within the power of the supreme appellate court for the conservation of public justice, and are matters that the parties to a suit cannot waive or regulate by agreement, or by their laches.

XII.

1. This case is before the Supreme Court on appeal allowed by a judge of the circuit court of appeals for the fifth circuit. This appeal transfers the case to the Supreme Court for hearing, and, although ground for dismissing the appeal may exist, such a fact, if it is a fact, does not deprive the court of the power to enter a judgment in the case, affirming or reversing the decree of the inferior courts. Such a judgment would not be void—if any judgment of the Supreme Court can be void—as between the parties to the record.

The appeal, then, gives the court jurisdiction of the case under the Constitution and in conformity with the statute.

2. To determine whether this court will retain the appeal and exercise its constitutional appellate power in the case, the act of March 3, 1891, must be construed, to ascertain whether it creates an exception to the appellate jurisdiction of the court within which this cause comes, and thereby excludes it from the appellate power and the supreme judicial power of the United States which is vested in the Supreme Court by the Constitution.

3. After having exercised this jurisdiction and power from the organization of the Government, in cases "between citizens of different States," an effort of Congress to take this power and jurisdiction from the Supreme Court and confer it upon an inferior court could hardly be justified under paragraph 2 of section 2 of article III of the Constitution, which does not touch the power of the Supreme Court, but empowers Congress, possibly, to except certain cases from its appellate jurisdiction.

4. The Supreme Court is a co-ordinate department of the Government, and the powers vested in it by the Constitution are beyond the control of any other department. Its jurisdiction, when extended to cases between parties to suits that are begun in courts of inferior jurisdiction, is limited to controversies between citizens of different States, and to other people, States, and questions specified in the Constitution; and it can enter judgments that bind such parties: but Congress cannot destroy this power by creating exceptions as to the right of appeal, or by regulations to control it. Such exceptions and regulations relate to the parties to controversies, not to the powers of the court as the supreme judicial tribunal of the United States, which is certainly equal to any supreme judicial court in the world, and has all the judicial powers that inhere in all supreme courts of justice. Can Congress destroy the appellate powers of the Supreme Court by declaring that all judgments of inferior courts are final?

5. In enacting the law of March 3, 1891, Congress was extremely cautious and careful not to trench upon the

powers and jurisdiction vested in the Supreme Court by the Constitution, and manifested especial care in respecting the judicial supremacy of the court over inferior courts of the United States and in preserving all its authority over State and territorial courts.

It enacted that—

"The judgments or decrees of the circuit court of appeals shall be final in all cases in which the jurisdiction is dependent entirely upon the parties to the suit or controversy, being aliens and citizens of the United States or citizens of different States" * * * "excepting that in every such subject within its appellate jurisdiction the circuit court of appeals at any time may certify to the Supreme Court of the United States any questions or propositions of law concerning which it desires the instruction of that court for its proper decision."

This may cut off the right of a party to a suit to invoke the judgment of the Supreme Court upon the rulings in such a case by the circuit court of appeals.

6. But does it take away the power of the Supreme Court to supervise the action of the circuit court of appeals, because it has failed or refused to certify a question to the Supreme Court for decision? The answer to this question is found in the following paragraph of the act, where a very broad exception to the finality of a decree of the circuit court of appeals is provided:

"And excepting also that in any such case as is hereinbefore made final in the circuit court of appeals it shall be competent for the Supreme Court to require, *by certiorari or otherwise*, any such case to be certified to the Supreme Court for its review and determination with the same power and

authority in the case as if it had been carried by appeal or writ of error to the Supreme Court."

This preserves the full appellate power of review and determination, under the Constitution, and gives the court plenary and discretionary power as to the manner in which it will exercise this power, or the writ or mandate it will issue to the inferior court, whether "by certiorari or otherwise."

7. This is not a right secured to a party to a suit, to appeal upon points reserved, but it is something very much higher. It is the right to petition the Supreme Court of the United States to "review"—again to examine—the record of a cause in the circuit court of appeals and determine the same according to law and justice and the right of the matter; and this statute defines the power thus resorted to as being "the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court." Without this power of "review" by the Supreme Court, uniformity of decision, obedience to the law as it is settled by the Supreme Court, and correctness of procedure would be in the discretion of inferior courts.

8. Of course the Supreme Court can reject such a petition, but it will never do so if such rejection is a denial of justice. It may say, as a general rule, that it will exercise such jurisdiction only in cases of public importance or as to questions of general concern. No exact definition can be given to the limits of such a rule.

"The equal protection of the laws," which cannot be denied "to any person," is the truest guide to the conscience

of the court and the only safe reliance of the people in the exercise of such discretionary powers.

This is especially true where the powers and jurisdiction of an inferior court have been abused, or corruptly used by any party to a suit, or where such a court has usurped jurisdiction in a case, or has determined the rights of persons who are not parties to the suit, or has violated or disregarded the mandate of a superior court, or has exceeded its jurisdiction in rendering a decree in a cause, or has decided upon the rights of the parties in matters that are not within the issues formed in the pleadings in a cause, or has unjustly and unlawfully imposed the payment of sums of money upon a party to a suit, that are onerous, as a condition precedent to his being admitted to a clear legal right.

9. In cases of the kind mentioned, of which this case is an illustration, the action of the Supreme Court is appellate and supervisory, but it is moved to such action upon an application made to it directly or upon a record which a judge, duly authorized by law, has caused to be sent up to the Supreme Court on an appeal. The record being filed under the provisions of law, the jurisdiction attaches.

In either case, or in any case, the Supreme Court, under rules provided by its order, will take cognizance of the case, without being prevented by the form or manner in which the injustice complained of is presented for consideration.

10. That this full exertion of the power to do justice and to require it to be done by inferior tribunals is in keeping with the spirit and purpose of the statute is exemplified in the following paragraph:

"The circuit court of appeals at any time may certify to the Supreme Court of the United States any questions or propositions of law concerning which it desires the instruction of that court for its proper decision. And thereupon the Supreme Court may either give its instruction on the questions certified to it, which shall be binding on the circuit court of appeals in such case, or it may require that the whole record and cause may be sent up to it for its consideration, and thereupon shall decide the whole matter in controversy in the same manner as if it had been brought there for review by writ of error or appeal."

11. If an appeal, lawfully granted and prosecuted, brings a record from an inferior court to the Supreme Court, the court has power to take cognizance of the case and may render its decree upon the entire record. This is an original power of the court, as to which the statute is only declaratory, or in affirmation of existing law.

XIII.

But this appeal is sustained by the statute, on other grounds, as a valid appeal in this case.

1. This jurisdiction of the circuit court in this case is not "dependent entirely upon the citizenship or the residence of the opposing parties to the suit."

In a case in equity, the citizenship of the parties is never the sole test of the jurisdiction of a court. The jurisdiction of a Federal court of equity depends also upon the nature of the cause of complaint or the facts stated. There must first be jurisdiction of the court to hear and determine the rights of the complainant as they are stated in a cause in equity,

and then jurisdiction of the parties, which depends on citizenship.

The facts upon which the jurisdiction of the cause depends must be stated in the bill of complaint in a cause in equity, and if they do not show the jurisdiction of the court, and also of the parties, the court cannot render a lawful decree in the cause. In such a case the jurisdiction of the court cannot "depend entirely" upon the citizenship or residence of "the opposite parties to the suit or controversy."

2. As this part of this law is in derogation of the appellate jurisdiction and power of the Supreme Court, it must be construed strictly and must be limited to the cases that are clearly excepted from the operation of the constitutional powers and jurisdiction of the Supreme Court by act of Congress.

3. The words "final in all cases," used in this part of the statute, are not necessarily exclusive of the appellate jurisdiction of the Supreme Court, nor do they make that jurisdiction to depend upon the consent of the circuit courts of appeal, signified in certifying questions in the case to the Supreme Court for its decision. No case can be stated in which the jurisdiction of the Supreme Court can be made to depend, under the Constitution, upon the consent of the inferior courts.

4. This statute may affect the rights of the parties to a suit to transfer the cause by appeal or writ of error into the Supreme Court, but it cannot and does not affect the power or jurisdiction of the Supreme Court to order the cause to

be sent up by appeal or writ of error or "certiorari or otherwise."

5. On this appeal the order of the Supreme Court to send up a complete record by writ or order of certiorari will bring the whole case into the Supreme Court, and subject it to "review and determination" as fully and effectually as if such an order had been made on the petition of the appellants under paragraph 3 of rule 37.

6. This case is not made "final" under the sixth section of the act of March 3, 1891, and the right of appeal exists and is preserved by the last paragraph in that section. In all cases where the want of jurisdiction in the inferior court, either to determine the cause or to proceed to judgment upon the cause of complaint as stated, or in the absence of indispensable parties, or in the excess of jurisdiction in the decree rendered, appears affirmatively on the face of the record, the right of appeal is not abolished by the sixth section of the act of March 3, 1891.

7. The decrees that were taken by appeals from the circuit court to the circuit court of appeals were, none of them, final decrees in the cause, and no final decree has yet been rendered in this cause in the circuit court of the northern district of Georgia. The latest decree, October 15, 1898 (Record, page 72), postpones a litigation as to the rights of parties to a fund, not yet paid into court, amounting to $18,433.36, but the settlements of litigated questions as to the amount of that fund and of the liability of parties to pay it were made in decrees that were final in character, but not in fact, as to those matters. The decree for the sale of land in Georgia that is

located in *Alabama* involves a Federal question, the sale being by the marshal of the court.

The question of jurisdiction in the circuit court to render a decree in this cause, such as that of March 30, 1895, or in favor of the Galeton Cotton Mills, a corporation organized since the suit was begun, and not a party to the suit; or to decree a sale of the larger part of the mortgaged property, situate in Alabama; or to decree the sale of that property by a marshal of the court or by a commissioner appointed by the court; or any other question of jurisdiction, was not raised by demurrer, motion to dismiss, or by exception taken in the case.

The questions of jurisdiction, that appeared on the face of the record, were overlooked by the circuit court and the circuit court of appeals, and no occasion was presented for certifying the same to the Supreme Court, either on a divided opinion or as presenting a constitutional question; but it is the duty of all the courts to raise and decide such questions when they are manifest on the face of the proceedings in any case.

8. Whether these decrees were final, so as to bind the parties or the circuit court, and whether they are final so as to support an appeal from the circuit court to the circuit court of appeals, is a question of jurisdiction that is presented in this case.

If they are not "final decisions" in the circuit court, the affirmance of them, including the basic decree of March 30, 1895 (Record, page 6), in the circuit court of appeals, are extrajudicial and of none effect.

9. The power of review by the Supreme Court, which is, at least, emphasized in the statute of March 3, 1891, seems not to depend upon the finality of these decrees in the circuit court of the northern district of Georgia, and the confusion and contradictions between them strongly emphasize the necessity of a review of this entire proceeding.

XIV.

The appellants respectfully insist that the state of the record as it exists, or with the additions to it that will follow an order for a writ of certiorari to complete it, discloses errors, irregularities, and defects that show that the circuit court of the northern district of Georgia has proceeded in this cause contrary to law, to the great loss of the bondholders who are not interested in the Galeton Cotton Mills, and to the Huguley Manufacturing Company, and to William T. Huguley, and to the Alabama and Georgia Manufacturing company.

And they ask that this honorable court will review the entire case, that justice may be done therein according to law.

They also state that they rely upon the assignments of error to the several decrees and orders of the circuit court of the northern district of Georgia as they appear in the record, if this honorable court denies the writ of certiorari to complete the record; and if the certiorari is allowed, the appellants petition the court for leave to assign errors upon the entire record when the same is completed.

Appellants further move this honorable court that in connection with the certiorari to the circuit court a mandate

issue to the circuit court of appeals for the fifth circuit, directed to said court, requiring that it shall correct the clerical errors in the record of the proceedings in this cause in said court, and that said court will cause to be stated and certified to the Supreme Court of the United States the record of the proceedings in the circuit court of the northern district of Georgia, upon which this case was heard and determined by said circuit court of appeals.

The omission of the circuit court of appeals to have the papers mentioned in the stipulation of counsel identified by the minutes of the court, or in some definite way, left the record on the appeal to that court incomplete when the case was heard and determined, and it is impossible to now identify the same by reference to the records of the circuit court of appeals as they now stand.

Either the judgment rendered upon the incomplete record is void, or the record of the circuit court of appeals must be completed so as to furnish a legal foundation for the judgment.

XV.

The appellants, by leave of the court, will file with the clerk the following additional transcript of proceedings in this cause, certified, under the seal of the circuit court of appeals, on the 24th day of September, 1901, by the acting clerk of said court, the clerk thereof having died recently, and they present the same to explain the state of the record and to show that they have not been at fault in that matter:

UNITED STATES CIRCUIT COURT OF APPEALS,
FIFTH CIRCUIT.

THE HUGULEY MANUFACTURING COMPANY ET AL., *Appellants*,
vs.
THE GALETON COTTON MILLS ET AL., *Appellees.*
No. 798.

From the circuit court of the United States for the northern district of Georgia.

UNITED STATES CIRCUIT COURT OF APPEALS,
FIFTH CIRCUIT.

HUGULEY MFG. CO. ET AL., *Appellants*,
vs.
THE GALETON COTTON MILLS, *Appellees.*

The appellant in the above-stated cause comes and moves the court to direct the costs of printing the record in the above-entitled cause, including the clerk's fee for supervising the same, out of the fund in the registry of the court below, as shown by the record in said cause on file in this court, the same being the fund in controversy, except the sum of four hundred dollars, which movant expects to be able to pay, on the following grounds, to wit:

1st. Because movant is insolvent and unable to pay the same (except as to said $400.00).

2nd. Because movant has exhausted every effort to obtain money to pay for copying and printing the record, and has only been able to obtain the sum of twelve hundred dollars, eight hundred of which has been expended in having the record copied and certified to this court, all which is shown by the affidavit of W. T. Huguley, herewith filed.

3rd. Movant submits as an additional reason why this motion should be allowed that through its counsel it has

exhausted every effort to obtain the consent of counsel for appellee to abbreviate the record as sent to this court, and to obtain a written stipulation to omit certain portions thereof from the printed record, but without success, all of which is shown by the affidavit of W. R. Hammond, hereto annexed.

Feb'y 21, 1899.

(Signed) W. R. Hammond,
" J. M. Chilton,
Sol's for Appellants.

UNITED STATES CIRCUIT COURT OF APPEALS,
FIFTH JUDICIAL CIRCUIT.

State of Georgia, }
Fulton County. }

The Huguley Manufacturing Company, *Appellant,* }
vs.
The Galeton Cotton Mills, *Appellee.* }

In person came before the undersigned W. R. Hammond, who, after being duly sworn, deposes and says that he is of counsel for the appellant in the above-stated cause. On the 8th day of November, 1898, deponent called on Mr. B. F. Abbott, of counsel for appellee in said cause, and asked him to consent to an abbreviation of the record and the evidence on appeal to the circuit court of appeals. Deponent found, after a brief conversation with Mr. Abbott, that he was indisposed to make any consent or to allow deponent to do anything to which he would give his attention with a view to abbreviating the evidence.

A few days previous thereto deponent had called on Mr. P. H. Brewster and asked him to enter into an agreement in reference to an abbreviation of the record and the evidence on the appeal, and Mr. Brewster told deponent that he did not have time to consider the matter and declined to

go into any negotiations with deponent on the subject whatever. Deponent asked him what he must do, and he referred deponent to Mr. Abbott, his associate, stating that he would abide by any agreement that might be made between his said associate and deponent.

Deponent then, on November 8th, 1898, addressed a letter to Mr. B. F. Abbott, of counsel for appellee, a true copy of which is attached hereto. To this letter deponent received no reply, except a verbal statement from Mr. Abbott that he could not undertake the labor necessary to an abridgement of the record. Deponent afterwards, on December 17th, 1898, addressed a letter to Mr. B. F. Abbott in reference to an abridgement of the record, a true copy of which is hereto attached.

This letter was received by Mr. Abbott, who told deponent verbally subsequently thereto that he had received the same, but that he could not make any consent to the abbreviation suggested. The agreement handed to Mr. Abbott, as stated therein, was not returned to deponent by him. Deponent further says that he made a special request of Mr. Abbott, counsel for appellant, prior to the making up of said record by the clerk, to agree to the omission of all the evidence in the case referring to the physical condition of the property in consideration of the grounds proposed, that no exception should be made to the ruling and decree of the court in refusing the claim of appellant on account of the physical condition of the property. This embraced a large part of the proofs in the cause, and would have been a very material reduction. Deponent proposed to Mr. Abbott to have the record prepared with this part eliminated and submitted to him for his examination, but Mr. Abbott said that this would be too much labor, and that he could not undertake it. Deponent has made every effort in his power to obtain a consent from counsel for appellee in reference to the abbreviation of the record, and has never been able to get them

or either of them to agree to any method by which the same might be accomplished.

Deponent attaches hereto a true copy of the agreement handed to Mr. Abbott, accompanying the letter above referred to of December 17, 1898.

Deponent further says that after said record was made up and returned to the court of appeals, to wit, on the 1st day of February, 1899, he addressed a letter to Messrs. B. F. Abbott and P. H. Brewster for the purpose of obtaining from them a stipulation as to the printed record in said cause. A copy of said letter is hereto attached and a copy of the proposed agreement which accompanied the same. Said agreement was returned to deponent by counsel for appellee without their signature and with a written memorandum thereon signed by them, which is hereto attached.

Deponent is of the opinion that said record could have been materially abbreviated, and fully one-half the cost of copying the same, as well as the cost of printing, could have been saved if deponent could have obtained the co-operation and consent of [counsel for appellee in said cause. He is of the opinion that the propositions made by him to counsel for appellee were all reasonable, and might have been complied with without any injury to appellee's side of said cause.

W. R. HAMMOND.

Sworn to and subscribed before me this the 6th day of February, 1899.

S. D. HARRIS, [SEAL.]
N. P., Fulton County, Georgia.

Hammond, Skee (obliterated) Langley, Atlanta, Ga.

NOVEMBER 8, 1898.

Hon. B. F. ABBOTT, *City.*

DEAR SIR: A few days ago I called on Mr. P. H. Brewster, associate counsel with you in the case of "The Huguley

Mfg. Co. *vs.* The Galeton Cotton Mills," and asked him to consent to an abbreviation of the record and the evidence on the appeal to the circuit court of appeals. He told me that he did not have time to consider the matter and declined to go into any negotiations on the subject whatever. I asked him what I must do, and he referred me to you, stating that he would abide by any agreement that you and I might make. Feeling confident that I might be able to obtain your co-operation, I called on you today. I found, however, after a brief conversation with you, that you were indisposed to make any consent or to allow me to do anything to which you would give your attention with the view of abbreviating the evidence.

I beg to call your attention to the following language of the circuit court of appeals in the case of "Nashua & Lowell R. Corp. *vs.* Boston & Lowell R. Corp.," in 61st Fed. Rep., p. 245:

"Considering the duty which solicitors and attorneys practicing in the Federal tribunal owe to the courts and to each other, it is to be expected that ordinarily the clerk will receive joint directions with reference to facilitating and simplifying the transcript on appeal."

As I understand you, in our interview today you were unwilling to consent to any abbreviation whatever of the transcript in this case. I desire again to make the request of you that you consent to take up the matter with me of abbreviating the transcript of the record. The evidence is very voluminous, covering nearly 1,700 pages of typewritten matter, the same being the stenographer's report. This report contains a great deal that is not evidence, as, for instance, the statements of the stenographer that the court met on certain days and giving the names of counsel for plaintiff and defendant that were present; also objections made by counsel to evidence, giving in many places the remarks of counsel, and giving also the language of the master in sustaining or overruling the objections. There is also a great deal of

the stenographer's report that is not evidence proper. Fo
instance, a question would be asked and objected to, and th
master would sustain the objection. Such matter as th
ought to be eliminated from the record by consent of counse

We have a number of sets of interrogatories that wer
asked witnesses, as expected, in which the questions pr
pounded to different witnesses are identical. We desire
stipulation from you that these questions need not be copie
but once in the record. The answers of the witnesses ca
be made just as intelligible by copying the questions one
as by copying them a dozen times. In the testimony as re
ported by the stenographer there are a great many repet
tions. Sometimes questions are asked and answered i
almost identically the same language twice. There ough
to be some way in which we might agree that mere repet
tions, either in questions or answers, might be omitted.

I am willing on my part to do the labor necessary to cur
tail this record, and request that you give me such co-opera
tion as your duty to the court, to say nothing of your duty
to opposing counsel, would prompt. It seems to be th
opinion of the court of appeals that it is the duty of counse
on both sides of the cause to aid the court in the abbrevia
tion of records as much as possible. I am willing to under
take the labor of boiling this evidence down and stating th
substance of it in much briefer form than it is stated in th
stenographer's report if you will join me in good faith and
examine this work after I have done it with the view to
giving it your consent if it shall be properly done.

I make this request of you for the purpose of conforming
to the views of the court of appeals as expressed by them in
a number of cases reported, where they indicate in strong
terms that they think counsel on both sides of the cause
should co-operate for the purpose of abbreviating the record.

As I understand you today, you were utterly unwilling to
undertake the labor of making an examination of the ab-
breviated statement of the record, and were unwilling to

consent that anything might be eliminated so as to make the record short and compendious, as it should be before the court of appeals.

Hoping to hear from you favorably in this regard, and that you will be willing to co-operate with me in endeavoring to accomplish this result, I am,

Yours truly,

(Signed) W. R. HAMMOND.

FEBRUARY 1, 1899.

Messrs. B. F. ABBOTT and P. H. BREWSTER, *City*.

GENTLEMEN: Enclosed I hand you a written stipulation as to the omission of certain parts of the record in the case of The Huguley Mfg. Co. *vs.* The Galeton Cotton Mills, appellee in the U. S. circuit court of appeals for the fifth circuit, from the printed record. Of course, our object is to get rid of the expense of printing these portions of the record which have been made up and already transmitted by the clerk. I respectfully request your attention to this matter and an early reply. If you cannot consent to the omission of all of these items from the printed record, please be kind enough to return the paper to me, indicating what portions you are willing to consent to omit. If you decline to consent to the omission of any of these papers, please return this paper to me with your refusal endorsed on the same in writing. I will thank you very much to sign the consent. I would add that all of these books and papers have been very carefully prepared in the neatest and most intelligible manner by Mr. Brown, and that none of us will find any difficulty in readily and fully understanding all of his figures.

Awaiting your early reply, I beg to remain,

Yours most truly, W. R. HAMMOND,

Of Counsel for Appellant.

U. S. CIRCUIT COURT OF APPEALS, FIFTH JUDICIAL CIRCUIT.

THE HUGULEY MANUFACTURING COMPANY, *Appellant*,
vs.
THE GALETON MILLS, *Appellee*.

It is hereby stipulated and agreed between counsel for appellant and appellee in the above-stated case that the following portions of the record in said cause be not printed, to wit:

1. Forty-three monthly and quarterly reports, from December, 1892, to December, 1895, of the superintendent of the Galeton Cotton Mills.
2. One hundred and sixty-six pages of account sales of N. Boynton & Company.
3. The inventory made by Higgenbotham & Brown.
4. The journal of the Galeton Cotton Mills.
5. The ledger of the Galeton Cotton Mills.
6. The cotton books of the Galeton Cotton Mills.
7. The cotton books of Atkinson & Turner.
8. The cotton books of J. T. Zachry.

Each party to this agreement reserves the right to make such reference to any of said portions of the record, and to use the same, and to quote from the same in briefs and arguments as they may deem proper, just as if the same had been printed.

This February —, 1899.

J. M. CHILTON,
W. R. HAMMOND,
Attorneys for Appellants.

——— ———,
Attorneys for Appellee.

As we understand the law, the appeal will be heard and determined on the record, and we do not understand that

anything will be a part of the record in the court of appeals except such as is copied and certified by the clerk as such. The documentary evidence mentioned in the foregoing stipulation is in large part the documentary evidence offered by Galeton Cotton Mills and Robinson, trustee, in support of their defense. This being so, of course we decline to consent to the above stipulation.

This 2nd Feb., 1899.

DORSEY, BREWSTER & HOWELL,
B. F. ABBOTT,
Counsel for Galeton Cotton Mills.

Counsel for appellee cannot agree to the above and foregoing prepared stipulation. The defense set up before the master consisted in large part of the evidence contained in the books and papers mentioned above. We are clearly of opinion that it should be printed in order that the court of appeals may have it in convenient form and in compliance with the rules, as we understand it.

Feb. 6, 1899.

DORSEY, BREWSTER & HOWELL,
B. F. ABBOTT,
Att'ys for Appellee.

DEC. 17, 1901.*

Hon. B. F. ABBOTT, *City.*

DEAR SIR: Enclosed I hand you agreement in reference to copying of the cotton books of the Galeton Cotton Mills and of Atkinson & Turner, which I request you to sign and return to me. This will abbreviate the record very much, and I hope you can see your way clear to complying with our request in this regard. I have just examined these books, and they show the purchase of a large number of bales on many different days, the weight of each bale being given separately. I think you will agree with me that it is unnec-

* NOTE.—The date of the foregoing letter is evidently incorrect.

essary to set down the weight of these separate bales, and that it will only be necessary to give the aggregate number of pounds for each day. The books also show the aggregate amount of money paid for each day, and this, of course, will show the price per pound.

Awaiting your reply, I beg to remain,

Yours truly, W. R. HAMMOND.

UNITED STATES CIRCUIT COURT OF APPEALS.

J. J. ROBINSON, *Trustee*,
vs.
ALABAMA & GEORGIA MANUFACTURING COMPANY ET AL.

It is agreed between counsel for appellant and appellee that the clerk of the United States circuit court, in copying the books of the Galeton Cotton Mills and in copying the cotton books of Atkinson & Turner, introduced in evidence in the above-stated cause, may make a statement of the aggregate number of pounds of cotton purchased each day and the aggregate price paid for the same, as shown by said books on each day, omitting the separate weights of each bale and the names of the parties from whom they were bought, and also the marks and numbers of the bales.

——— ———,
Counsel for Appellants.

——— ———,
Counsel for Appellee.

U. S. CIRCUIT COURT OF APPEALS, FIFTH JUDICIAL CIRCUIT.

THE HUGULEY MFG. CO., *Appellant*,
vs.
GALETON COTTON MILLS, *Appellee*.

STATE OF LOUISIANA,
Parish ——.

In person comes before the undersigned W. T. Huguley, who, after being duly sworn, deposes and says:

That he has been personally conducting the litigation in the above-stated case for the Huguley Mfg. Co. ever since its first beginning. He holds authority from D. Jannappoulo, the president of the company, to do so, and it is through the efforts of deponent alone that the litigation has thus far been carried on.

Deponent is the largest stockholder in the Huguley Mfg. Co. and more interested than any one else.

Deponent says that he has drawn upon his own private means to conduct the litigation in the above-stated case until he has exhausted them. He has used every effort and every means in his power to procure money for the purpose of paying the expenses of copying and certifying the record and of printing the same in the above case, and he has no means whatever of paying for the printing of the record in this court. Deponent has made his calculations to be able to get the record to this court and have the same printed out of the funds that he expected to be able to collect, but he was calculating on obtaining a consent from the counsel on the other side to abbreviate the record, which consent he failed to obtain. It has practically exhausted his resources to have the long record copied and certified to this court. Deponent expects to be able to get $400.00 more, besides what has been already obtained by him, which can be used for

the printing of the record as far as it will go. He states positively that this is absolutely all the money that he will be able to procure for that purpose.

This money has not yet been paid, but he has the promise of it and hopes to be able to get it. Deponent further says that the Huguley Mfg. Co. is absolutely insolvent and has long since been out of business and has no means whatever with which to pay any costs or expenses, except such money as it may be able to recover in the present case. Said Huguley Mfg. Co. has become insolvent by reason of the result of this foreclosure proceeding.

(Signed) WM. T. HUGULEY.

Sworn to and subscribed before me Feb. 21, 1899.

——, ——.

Endorsed: Filed Feb. 21, 1899. Motion to pay for part of printing record out of fund in court, with exhibits. J. M. McKee, clerk.

CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT.

HUGULEY MFG. CO. ET AL. *vs.* J. J. ROBINSON. } No. 798.

And now comes appellee and suggests that the transcript of the record in the above-stated cause is incomplete in this:

The clerk of circuit court below has failed to send up certified copy of the order of the court which shows on the face that it was passed by consent, providing for the payment out of the proceeds of the mortgaged property in the registry of the court the amount of the judgment in favor of the Huguley Manufacturing Company against Galeton Cotton Mills for 2,500 dollars principal, besides interest, less certain taxed costs against that special finding, and which order also provided for the payment of 3,500 dollars to Dorsey, Brewster &

Howell and 3,500 dollars to B. F. Abbott, as solicitor for the plaintiffs below, in pursuance of decree previously rendered.

Wherefore appellee moves for order directing the clerk of the circuit court for the northern district of Georgia to certify and send up copy of said order.

P. H. Brewster,
B. F. Abbott,
Att'ys for Appellees.

Appeared B. F. Abbott, one of the attorneys for appellee, and made oath that the statements contained in the foregoing motion are true.

B. F. Abbott.

Sworn and subscribed to before me April 18, 1899.

——— ———.

We consent that the above order may be considered a part of the record.

April 18, 1899.

J. M. Chilton,
W. R. Hammond,
Counsel for Appellant.

It is also agreed that the Galeton Cotton Mills filed a petition to apply the rents and profits which were awarded by the master to the deficiency of the mortgaged debt, the same being the petition referred to in the decree of Feb. 28, 1898, as filed that day. It is further agreed that the clerk of said circuit court shall certify a copy of said petition and also said consent decree first above mentioned to this court as upon certiorari, which is waived.

April 18, 1899.

Hammond & Chilton,
Sol'rs Appellants.
P. H. Brewster,
B. F. Abbott,
Att'ys for Appellees.

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT.

I, J. Martin McKee, acting clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing twelve pages contain a true, full, and perfect transcript of the papers filed in this court of date Feb. 21, 1899, entitled "Motion by appellant to pay for part of printing record out of fund in court, with exhibits," and "Motion suggesting diminution of the record by appellees and agreement to correct record," filed April 18, 1899, same being filed in case of Huguley Manufacturing Company *et al. vs.* Galeton Cotton Mills *et al.*, No. 798, as fully and completely as the same now remain of record and on file in this office.

In testimony whereof I hereunto subscribe my name and affix the seal of said U. S. circuit court of appeals, at the city of New Orleans, this the 24th day of September, A. D. 1901.

(Seal United States Circuit Court of Appeals, Fifth Circuit.)

J. MARTIN MCKEE,
Acting Clerk United States Circuit Court of Appeals, Fifth Circuit."

The transcript above copied is presented in connection with and in support of the motion for certiorari with a mandate to the circuit court of appeals to complete the record in this cause, so that it will show the record, or parts of the record of the circuit court in this case, upon which the hearing was had and the determination thereof was based. It shows also proper diligence and good faith on the part of the appellants in the prosecution of their rights under their appeal to said circuit court of appeals in ac-

cordance with the rules governing the preparation of records on appeals in all appellate courts.

There is no substantial merit in this case. There was no necessity for filing this bill in equity. The trustees had the power of sale under the mortgage after default in the payment of interest, on the demand of any bondholder, and if one or more of them should refuse to sell the property a court of equity would compel the sale and a conveyance by the trustees to the purchaser. Neither Huguley nor anybody ever denied or contested the mortgage. It gave them the right to continue in business, using the property, and the purchase of the equity of redemption, and the possession of the property under the sale decreed by the State court for a large sum of money, about $60,000, was to enable the company to make improvements and carry on the business. It was all done in good faith and for the benefit of the mortgaged property, and the property was purchased subject to the mortgage by the Huguley Manufacturing Company.

In the matter of the maturing of the whole debt for the non-payment of interest, it not falling due according to the contract until 1904, the evidence shows that the syndicate bondholders evaded justice by contrivance and technical excuses, really to prevent the president of the Alabama and Georgia Manufacturing Company from paying the interest due to them on January 1, 1891. The syndicate bondholders pushed their demands and refused everything except a literal compliance with their alleged right to force the maturity of the bonds if the interest was not paid on the 1st day of January, 1891. Robinson, as trustee, went into court with his bill on the 21st of January, 1891, pretending that he represented all

the bondholders and was acting under their requirements, when in fact the holders of 40 of the bonds accepted payment of the interest due them and refused to join in Robinson's declaration of the forfeiture of the rights of the mortgagor under the deed of trust. This was an unjust exaction by the trustee, who got $500 out of the mortgaged property. The only thing he did to earn that $500 that Huguley was not equally entitled to be paid for was to pervert and abuse his trust and to force the mortgaged estate to bear the enormous and unjust charges and costs of this unnecessary litigation.

When the record is complete these facts will appear in it and will be brought to the attention of the Supreme Court on a proper assignment of errors, which cannot be made until the record is complete.

JOHN T. MORGAN,
Attorney for Appellants.

The appellants submit the following list of authorities in support of the motions based upon the foregoing statements and arguments:

I.

The question of jurisdiction addresses itself to the conscience of every court, for without it judicial sentence is the most dangerous form of the usurpation of power.

Defective Transcripts and Certiorari.

1. The case of Nashua and Lowell R. R. *vs.* Boston and Lowell R. R., 61 Fed. Rep., 237, is a strong and correct presentation of the rights of parties on appeal or certiorari as to the transcript that should be sent up. The trial notes are quoted as follows:

1. *Dismissal of appeal—defective transcript—certiorari:*

1. "A clerk's certificate, which shows that certain parts of the record were omitted from the transcript by direction of appellants' attorney, is nevertheless sufficient to bar a motion to dismiss the appeal, when it does not appear that the omitted parts are 'necessary to the hearing' (C. C. A. rule 14, par. 3, 47 Fed., VII), and in such case the appellee, if he thinks the transcript defective, must resort to a certiorari or other remedy."

2. *Transcript on appeal—what to contain:*

"On an appeal in equity, in the absence of joint stipulation for simplifying the transcript, the clerk should send up the whole of the record, in the strict sense of the word, made as directed by Rev. St., sec. 750, except that, when there has been a previous appeal, matters preceding the mandate should ordinarily be omitted; and if any parts thereof are omitted,

even by joint stipulation, their nature should be indicated. But as to the proofs, entries and papers on file 'necessary to the hearing of the appeal' (Rev. St., sec. 698), the clerk, in the absence of joint stipulation, is to be guided ordinarily by the selections of the appellant's solicitor."

3. *Partial appeal:*

"It is no ground of objection that an appeal is expressly limited to a part of the decree below, when this is the only part from which the appellant could appeal; especially in view of the fact that under C. C. A., rule 11, which requires an assignment of errors to be filed simultaneously with the appeal, the legal effect may be in any case a partial appeal."

4. In Mears *vs.* Lockhart (circuit court of appeals, eighth circuit, April 10, 1899), 94 Fed., 274, the court held that—

"The evidence taken in an equity cause in a Federal court *must be made a part of the record and certified on appeal, otherwise it will be disregarded; and, unless the record contains some evidence to sustain the finding, the decree will be reversed.*"

CALDWELL, *circuit judge*, after stating case, said:

"The record fails to show any of the evidence, except the contract or agreement under which appellant claims his equitable interest in the land, and which, in connection with the answer, shows that he has an equitable interest therein; *but there is nothing whatever in the record showing upon what evidence the court below rendered a decree in favor of the appellee. On appeal from a decree in equity the record must show some evidence to sustain the findings, otherwise the decree will be reversed.*"

Citing Blease *vs.* Garlington, 92 U. S., 1.

"In the case cited, the whole subject is considered, and the proper practice settled. There being no evidence to sus-

tain the decree (in the record), it must be *reversed, and the cause remanded*, with leave to the parties to amend their pleadings as they may be advised, and to take proofs. Ordered accordingly."

II.

Federal Question.

5. *The record discloses that the sale was made in violation of the laws of the United States, by the requirements of the decree of foreclosure, thus raising a Federal question.* This question arose at the time of the filing of the suit. The power to sell real estate in Alabama by a decree of a court in Georgia to pay the mortgage debt, included the whole question of jurisdiction over the subject-matter. That was the purpose of the filing of the suit, which appears on the face of the record, and that takes it out of the operation of the statute conferring exclusive appellate jurisdiction upon the circuit courts of appeal, if that is the meaning of the act, and opens the case for a full investigation of the record. While the decisions are not expressly in point their reasoning is conclusive. The object of the act of 1891 was, in part, to to relieve the United States Supreme Court of the burden of the vast number of cases which in no way raised Federal questions, and in those cases where the courts had jurisdiction of the subject-matter and the citizenship of the parties conferred jurisdiction of the cases, the judgments and decrees of the circuit courts of appeal were made final. But in all cases where a Federal question is involved, Congress left the right of review by appeal or writ of error where it was before. There is no change as to those cases which in-

volve Federal questions. They are expressly reserved as to treaties, constitutional and statutory questions; and jurisdiction over the subject-matter, not being changed by the terms of the statute, must have been left as before the passage of the statute. This sale was made under a decree that was in plain derogation of the laws and the soverign and constitutional rights of Alabama and in violation of her statutes regulating the sale of lands by judicial proceedings and in violation of the statutes of the United States.

6. In cases involving no questions except jurisdictional questions arising out of the citizenship of the parties, it was provided by statute that certificates of jurisdiction are necessary to enable the Supreme Court to pass upon such questions.

Maynard *vs.* Hecht, 151 U. S., 324.
Colvin *vs.* Jacksonville, 157 U. S., 368.
Shields *vs.* Coleman, 157 U. S., 168.

But upon appeal, where the right of appeal is not taken away by the statute, the Supreme Court does not require the presence of a certificate of jurisdiction in order to examine into the question of jurisdiction. It has been expressly held that the jurisdictional question may appear from the terms of the decree or the order allowing the appeal (Huntington *vs.* Laidley, 176 U. S., 668).

7. The statute of 1891 provides:

"The judgments or decrees of the circuit court of appeals shall be final in all cases in which the jurisdiction is dependent entirely upon the opposite parties to the suit or controversy being aliens or citizens of the United States or citizens of different States."

This section has been construed in several cases to include those cases in which an additional ground of jurisdiction has developed in subsequent proceedings.

Amer. Sugar Refining Co. *vs.* New Orleans, 181 U. S., 277.
T. S. & S. Railway Co. *vs.* Lewis, 173 U. S., 457.
Borgmeyer *vs.* Endler, 159 U. S., 408.
Mining Co. *vs.* Turk, 150 U. S., 138.
Ex Parte Jones, 164 U. S., 691.

8. But if any other ground than that of citizenship is shown to have existed, on the face of the record, at the time the suit was instituted, the Supreme Court of the United States will, upon appeal from the United States circuit court of appeals, go not only into the question of jurisdiction, but examine fully the merits of the case.

Chappell *vs.* U. S., 160 U. S., 499, 509.
Ekui *vs.* U. S., 142 U. S., 651.
Horner *vs.* U. S., 143 U. S., 570.
U. S. *vs.* Jahn, 155 U. S., 109.
Aztec Mining Co. *vs.* Ripley, 151 U. S., 79.
So. Railway Co. *vs.* Postal Tel. Co., 179 U. S., 641.
Fla. & Cent. R. R. Co. *vs.* Bell, 176 U. S., 321.

9. In the present case the judgment of the circuit court of appeals would be final between the parties if the original jurisdiction depended solely upon the diverse citizenship of the parties to the suit, but the judgment of foreclosure and sale in this case shows upon its face that the land decreed to be sold, on which the cotton-mill plant was located, includ-

ing cotton mill and machinery and all the tenements, etc., was situated wholly within the State of Alabama, only a few detached, isolated islands being described as being in Georgia, and said plant lying wholly without the jurisdiction of the court in which the suit was instituted. The question, therefore, of jurisdiction, is one of *subject-matter* and not of parties.

III.

10. Jurisdiction of Federal Courts.

In Mansfield, etc., R'y Co. *vs.* Swan, 111 U. S., 379, 382, the Supreme Court of the United States held as follows:

"On every writ of error or appeal, the first and fundamental question is that of jurisdiction, first of this court, and then of the court from which the record comes. This question the court is bound to ask and answer for itself, even when not otherwise suggested, and without respect to the relation of the parties to it."

In Morris *vs.* Gilmer, 129 U. S., 325, the United States Supreme Court held:

"But if the record disclose a controversy of which the court cannot properly take cognizance, its duty is to proceed no further, and to dismiss the suit; and its failure or refusal to do what, under the law applicable to the facts proved, it ought to do, is an error which this court, upon its own motion, will correct when the case is brought here for review. The rule is inflexible and without exception, as was said, upon full consideration, in Mansfield, etc., R'y Co. *vs.* Swan, 111 U. S., 382."

And the court goes on and quotes *verbatim* the extract above from that case.

11. In Vannerson *vs.* Leverett, 31 Fed. Rep., 376, Judge Speer held:

"It is never too late to consider the question of jurisdiction in the courts of the United States, and if at any time the want of jurisdiction should appear, it is the duty of the court to dismiss the case."

United States *vs.* North Bloomfield Min. Co., 53 Fed. Rep., 625.

12. *Respecting the "effect of want of jurisdiction,"* Mr. Desty says:

"If the record on its face shows a want of jurisdiction, advantage may be taken of the defect by motion at any stage of the proceedings."

Coal Co. *vs.* Blatchford, 11 Wall., 172.
The *Cassius*, 2 Dall., 365.
Municipal Inv. Co. *vs.* Gardiner, 62 Fed., 954.
Blythe *vs.* Hinckley, 84 Fed., 246.

13. *The want of jurisdiction of a court of equity to foreclose a mortgage upon lands situated beyond the territorial jurisdiction of the court, and to sell those lands under its decree, is radical and absolute, and may be suggested at any stage of the proceedings by counsel, or may be noticed by the court ex proprio motu.*

Mansfield, etc., R'y Co. *vs.* Swan, 111 U. S., p. 379.
Parker *vs.* Ormsby, 141 U. S., 81.
Grace *vs.* American Com. Ins. Co., 109 U. S., 278.

It is an elementary principle of jurisdiction that a court sitting in one State, whether State or Federal, cannot fore-

close a mortgage on and decree a sale of land situated in another State.

Boyce *vs.* Grundy, 9 Peters, 275.

Northern Ind. R. R. Co. *vs.* Michigan Central Railroad, 15 How., 233.

In Boyce *vs.* Grundy, *supra*, Mr. Justice Story said:

"Another objection is to that part of the decree which creates a lien upon the land in controversy lying in another State, and decrees a sale for the discharge of the lien. We are of opinion that the decree is erroneous in this respect: * * * the court had no jurisdiction to decree a sale to be made of land lying in another State by a master acting under its own authority."

14. Want of jurisdiction of this kind is absolute, and cannot be cured by waiver or consent of parties.

The *Lucy*, 8 Wallace, 307.

The *Nonesuch*, 9 *id.*, 504.

Penn. *vs.* Quicksilver Co., 10 *id.*, 553–556.

Railroad Co. *vs.* Ramsay, 22 *id.*, 327.

"It has been recently determined in America, after a full review of all the authorities, that a court of equity has no jurisdiction in cases touching land in foreign countries unless the relief sought is of such a nature as the court is capable of administering in the given case; a court of equity has not necessarily jurisdiction over a subject of ordinary equity cognizance simply because the parties are within the forum. Accordingly it was held that a court of equity sitting in and for one county in the State of Pennsylvania had no jurisdiction over a bill praying for an injunction against the defendant residing in another county, but who was temporarily within the jurisdiction of the court, for erecting a

nuisance which injured the plaintiff's land in that county; for, to give a complete remedy in such cases a court must not only restrain and prevent the continuance of the nuisance, but must order its removal and give compensation and damages for the injury already caused (Morris *vs.* Remington, 1 Parsons Eq., 387). So it seems a court has no jurisdiction to order a defendant to sell land situated in a foreign jurisdiction when the case would be otherwise within its power (Blunt *vs.* Blunt, 1 Hawks, 365)."

Story, Eq. Jur., 744*a*.

In the case of Morris *vs.* Remington, *supra*, the nuisance was a dam erected in Montgomery county affecting injuriously the plaintiff's adjoining farm in Philadelphia county. The suit for injunction was brought and the defendant served with process in Philadelphia county, so that part of the land affected as well as the parties were within the jurisdiction of the court.

15. *Proceedings to foreclose a mortgage are proceedings in rem.*

Pennoyer *vs.* Neff, 95 U. S., 734.

16. A decree of a Federal court without jurisdiction is void, even where all parties want the jurisdiction extended (M. C. & L. M. R. R. Co. *vs.* Swann, 111 U. S., 379).

It was held in L. & N. R. R. Co. *vs.* Behlmer, 169 U. S., 644, that an appeal operates as a supersedeas.

17. In California *vs.* Southern Pacific Company, 157 U. S., 229, Mr. Chief Justice Fuller, in an exhaustive review of the many intricate phases of the case, held:

"We are aware of no case in which this court has announced the conclusion that power is conferred by Congress

to authorize suits against citizens of other States joined with citizens of the same State as that of which plaintiff is a citizen * * * where there is no separable controversy or the citizens of plaintiff's State are indispensable parties." * * * "What Congress may have power to do in relation to the jurisdiction of circuit courts of the United States is not the question, but whether, where the Constitution provides that the court shall have original jurisdiction in cases in which the State is the plaintiff and citizens of another State defendants, jurisdiction can be held to embrace a suit between a State and citizens of another State, and citizens of another State and of the same State. *We are of opinion that our original jurisdiction cannot be thus extended, and that the bill must be dismissed for want of parties who should be joined, but cannot be without ousting the jurisdiction.*"

18. To same effect, see—

Nor. Indiana R. Co. *vs.* Mich. Cent. R. Co., 15 How., 233.

Fourth Nat'l Bank N. Y. *vs.* N. O. & C. R. R. Co., 11 Wall., 624.

Shields *vs.* Barrow, 17 How., 130.

Barney *vs.* Baltimore, 6 Wall., 280.

Louisville, N. A. & C. R. Co. *vs.* Louisville Trust Co., 174 U. S., 552.

Balto. & O. R. R. Co. *vs.* Wheeler, 1 Black, 286.

Rule 22 of Rules of Practice for Courts of Equity of the United States.

19. "It would be a solecism to say that the chancellor has jurisdiction to deal *in rem* where the thing against which the decree goes, and is alone the subject of and to be operated upon by it, is beyond the territorial jurisdiction of the court and not subject to its authority, and the decree, if

passed would itself be nugatory for the want of power or jurisdiction to give it effect. Chancery can have no jurisdiction where it can give no relief. Now what jurisdiction has the chancery court of Maryland over lands lying in a foreign country or in another State; and having no jurisdiction over lands so situated, what authority has it to decree a sale of them and impart to its trustee authority to go into such a State or foreign country to carry the decree into effect by making sale of them?

"It is true that where the decree sought is *in personam* and may be carried into effect by process of contempt, the court of chancery here may have jurisdiction although it may affect land lying in another State, the defendant being in Maryland, as in a case of trust or fraud or of contract, as where a bill is filed against a person in the State for the specific performance of an agreement or contract relating to land in another State. In such case the decree does not act directly upon the land but upon the defendant here."

White *vs.* White, 7 Gill & J. (Md.), 210.

IV.

Judicial Sales Governed by Lex Rei Sitæ—Local Actions—Formalities to be Observed.

20. *The Bounds of the Jurisdiction of Courts of Equity.*

"The court of chancery has no power directly to affect property out of the bounds of its jurisdiction. It acts upon the defendant by punishment for his contempt, for his disobedience of the court."

It is so both in England and America.

Boberdens *vs.* Rous, 1 Atk., 544.

Booth *vs.* Clark, 17 How. (U. S.), 333.

21. A late case in Connecticut affirms that—

"A foreclosure in the courts of the State of New York upon lands in Connecticut has no validity. The courts of each State have exclusive jurisdiction to settle the title to lands therein."

Farmers' Loan & Trust Co. *vs.* Postal Telegraph Co., 55 Conn., 334.

This was a case wherein the Postal Telegraph Company had mortgaged all its property situated in several States, including New York and Connecticut.

The court said:

"We are aware of no case that has gone so far as to recognize the validity of a deed given by a referee or other officer of the court by authority of law in another jurisdiction. The most that can be done is to allow foreign courts having juris liction of the parties to compel conveyance by the owner and recognize as valid title so acquired."

22. "*Every State has the right to regulate the transfer of property within its limits.*"

Hervey *vs.* Rhode Island Locomotive Works, 93 U. S., 664; 23: 1003.

Green *vs.* Van Buskirk, 7 Wall., 139; 19: 109.

S. C., 5 Wall., 307; 18: 599.

23. "The laws of the State in which land is situated control exclusively its descent, devise, alienation, and transfer, and the effect and construction of instruments intended to convey it."

United States *vs.* Fox, 94 U. S., 315.

United States *vs.* Crosby, 7 Cranch, 115.

Clark *vs.* Graham, 6 Wheat., 577.

Kerr *vs.* Moon, 9 Wheat, 565.

McCormick *vs.* Sullivant, 10 Wheat., 192.

Watkins *vs.* Holman, 16 Pet., 25.
Oakey *vs.* Bennett, 11 How., 33.
Suydam *vs.* Williamson, 24 How., 427.
McGoon *vs.* Scales, 9 Wall., 23.
Brine *vs.* Hartford Ins. Co., 96 U. S., 627.
Amer. & For. Ch. Union *vs.* Yount, 101 U. S., 352;
Jones *vs.* Habersham, 107 U. S., 174.

24. "No title to lands can be acquired or passed unless according to the laws of the State in which they are situated."
Clark *vs.* Graham, 6 Wheat., 597.

"The law of the place governs as to the formalities necessary to the transfer of real property, whether testamentary or *inter vivos*."
Robertson *vs.* Pickrell, 109 U. S., 608; 27: 1049.

25. In Desty's Federal Procedure, vol. 1 (9th ed.), sec. 87, pages 412, 414, the following well-settled rules are laid down:

"*The circuit court of one State has no jurisdiction beyond the limits of the State.*"
Boyce *vs.* Grundy, 9 Pet., 275.
Miss. and M. R. R. Co. *vs.* Ward, 2 Black., 485.
Northern Ind. R. Co. *vs.* Mich. Cent. R. Co., 15 How., 233.

"A court created within and for a particular territory is bounded in the exercise of its power by the limits of such territory."
Picquet *vs.* Swan, 5 Mason, 35; Fed. Cas. No. 11,134.
Ex parte Graham, 3 Wash. C. C., 456; Fed. Cas. No. 5657.

"Whatever may be the extent of the jurisdiction over the subject-matter in a suit, in respect to jurisdiction over

persons and property, it can only be exercised within the limits of the judicial district."

Toland *vs.* Sprague, 12 Pet., 300.

Picquet *vs.* Swan, 5 Mason, 35; Fed. Cas. No. 11,134

"Suits which concern realty cannot be maintained unless the land lies within the district."

Northern Ind. R. R. Co. *vs.* Mich. Cent. R. Co., 15 How., 233.

Livingston *vs.* Jefferson, 1 Brock, 203; Fed. Cas. No. 8411.

Picquet *vs.* Swan, 5 Mason, 35; Fed. Cas. No. 11,134.

Ex parte Graham, 3 Wash. C. C., 456; Fed. Cas. No. 5657.

"Nor to decree a sale of lands in another State by a master acting under authority."

Boyce *vs.* Grundy, 9 Pet., 275.

Watts *vs.* Waddle, 1 McLean, 200; Fed. Cas. 17,295.

See Lyman *vs.* Lyman, 2 Paine, 11; Fed. Cas. No. 8628.

26. To same effect, see—

Farmers' Loan and Trust Co. *vs.* Postal Tel. Co., 55 Conn., 334.

Jones on Mortgages, § 1444.

Lynde *vs.* Columbus C. R'y Co., 57 Fed., 993.

Black on Judgments, vol. 2, sec. 872.

Works on Courts and Their Jurisdiction, pp. 53–55, sec. 15, reviewing Burnley *vs.* Stevenson, 24 Ohio St., 474, 478; 15 Am. Dec., 201; citing Page *vs.* McKee, 3 W. P. D. Bush, 135; 96 Am. Dec., 201.

27. In Thatcher *vs.* Duval, 50 Ind., 30, it was held that a sale made by virtue of an execution issued on a judgment ob-

tained in the United States court could not be executed in a county other than that in which the premises were situated.

To same effect, see—

Morrell *vs.* Ingle, 23 Kansas, 32.
Baker *vs.* Casey, 19 Mich., 220.
Ulshafer *vs.* Stewart, 71 Pa., 170.
Monges *vs.* Oyster, 4 W. & S. (Pa.), 20.
Finley *vs.* S. C. Canal, etc., 2 Rich. Law, 567.

28. By statutory enactment in nearly all the States all sales of realty must be held at the court-house in the county in which the property is situated.

12 Ency. Plead. & Pract., 40; citing also—
Anniston Pipe Wks. *vs.* Williams, 106 Ala., 334.
Sessions *vs.* Peay, 23 Ark., 39.
Smith *vs.* Morse, 2 Cal., 524.
Longworthy *vs.* Featherstone, 65 Ga., 165.
Union Bank *vs.* Smith, 3 An., 147.
Koch *vs.* Bridges, 45 Miss., 247.
Morse *vs.* Bell, 45 Mo., 333.
Biggs *vs.* Brickell, 68 N. C., 239.
Hickey *vs.* Behrens *et al.* cases, 74 Tex., 488.

29. And where a sale is made by virtue of an execution from the United States court, the State law directing the place of sale governs.

12 Pl. & Pract., 41; citing—
Smith *vs.* Cockrell, 6 Wall., 756.
Wayman *vs.* Southard, 10 Wheat., 1.
Sinclair *vs.* Stanley, 64 Tex., 67.
Cassiday *vs.* Norris, 49 Tex., 613.
Moody *vs.* Moeller, 72 Tex., 635.

30. A sale of realty held at an improper place is void.

Koch *vs.* Bridges, 45 Miss., 247.
Mayers *vs.* Carter, 87 N. C., 146.
Sinclair *vs.* Stanley, 64 Tex., 67.
Tippett *vs.* Nise, 30 Tex., 362.
Brown *vs.* Christi, 27 Tex., 75.
Peters *vs.* Cator, 6 Tex., 554.
Howard *vs.* North, 5 Tex., 290.
Grace *vs.* Garnett, 38 Tex., 157.

31. *In Smith vs. Cockrell, 6 Wall., 756, it is held as follows:*

"*But, a sale by a marshal not conforming to the mode of proceeding in levying the execution, and making the sale, to the State practice, is irregular and void, and a deed by him on such sale conveys no title.*"

32. In Desty's Fed. Procedure, vol. 1 (9th ed.), section 84, it is said:

"It is the duty of the Federal appellate court to take notice of its own motion, that the record does not show jurisdiction in the court below, and thereupon to remand the cause."

Grand Trunk R'y Co. *vs.* Twitchell, 21 U. S. App., 45; 60 Fed., 371.
Snead *vs.* Sellers, 30 U. S. App., 8; 66 Fed., 371.
St. Louis, I. M. & S. R'y Co. *vs.* Newcomb, 12 U. S. App., 503; 56 Fed., 951.
Horne *vs.* Geo. H. Hammond Co., 155 U. S., 393.

33. In Metcalf *vs.* Watertown, 128 U. S., 586, Mr. Justice Harlan held:

"And whether the court had or had not jurisdiction is a question which we must examine and determine, even if the

parties forbear to make it, or consent that the case be considered upon its merits."

Mansfield, etc., R'y Co. *vs.* Swan, 111 U. S., 379, 382.
King Bridge Co. *vs.* Otoe County, 120 U. S., 225.
Blacklock *vs.* Small, 127 U. S., 96, 105.
Cameron *vs.* Hodges, 127 U. S., 322, 326.
Hilton *vs.* Dickinson, 108 U. S., 165.
New Orleans Nat'l Bk. Ass'n *vs.* N. O. Mut. Ins. Co., 102 U. S., 121.
Börs *vs.* Preston, 111 U. S., 252.
Mordecai *vs.* Lindsay, 19 How., 199.

V.

34. *Jurisdiction as to Parties in Interest.*

"The circuit court cannot make a decree in the absence of the party whose rights are necessarily affected thereby. The objection may be taken on the hearing below, or in the appellate court.

Coiron *vs.* Millaudon, 19 How., 113; 15: 575.

The arrangement of parties in this cause was a fraud on the jurisdiction of the court.

35. If W. T. Huguley, who was a co-trustee with Robinson (complainant in the original suit), had been joined as a complainant, the court would have been without jurisdiction. On one side of the case, as complainants, would have been Robinson, a citizen of Alabama, and Huguley, a citizen of Georgia, and on the other a citizen (and corporation) of the State of Georgia.

But instead of joining Huguley as a complainant he was made a defendant. Does this cure the jurisdictional defect?

If the suit had been brought by the *bondholders*, the beneficiaries of the trust, it is possible the trustees, if they had been made parties at all, would have been regarded as *nominal* parties, whether they had been joined as plaintiffs or defendants.

But when the trust is attempted to be enforced by the trustees in the absence of the beneficiaries as parties, *all* of the trustees are absolutely necessary parties.

McRea *vs.* Branch Bank, 19 How., 376.
O'Hara *vs.* McConnell, 93 U. S., 150.
Thayer *vs.* Life Ass'n, 112 U. S., 717.
American Bible Soc'y *vs.* Price, 110 U. S., 61.
Foster's Fed. Prac., vol. 1, page 130.

Being thus a necessary party, the citizenship of the trustee is material and is to be determined, not by the position on the record which the pleader has chosen to assign him, but by his real attitude to the controversy.

In Arrapahoe Canal Co. *vs.* K. P. R'y Co., 4 Dill., 277, (Justice Miller delivering the opinion), a stockholder brought his suit to compel an accounting between his own corporation and another. His own corporation he made a defendant, it being alleged there, as in effect alleged here, that it was dominated adversely.

It *was held* that, although the corporation was a defendant on the record, its interests and those of the complainant were identical, and that the controversy was really one between the complainant *and his corporation*, on the one side, and the accounting corporation, on the other.

But, whether he was technically adversely interested or not, W. T. Huguley was a trustee and made a party as such. As a trustee, his interest *was with his co-complainant*, and he was, to all intents and purposes, when the line was drawn as required in the decisions quoted, on the *plaintiff's side of the controversy*. That being so, the controversy could not be said to be one where all the parties on one side were citizens of different States from all the parties of the other.

The decisions cited have been reaffirmed as late as 151 and 156 U. S., and it will be found recognized in Shearson *vs.* Littleton, 105 Fed., 533. It was denied to be applicable in that case, however, because the defendant there was a merely nominal party.

The case cited—The Arrapahoe Canal Co.—it is said in Dillon on the Removal of Causes, "anticipated in its reasoning and result the decision of the Supreme Court in the Removal causes (the Removal Causes, 100 U. S., 457.)" (Dillon on Removal of Causes, page 39, sec. 25.)

Besides the removal causes, the same principle is decided in—

Harter *vs.* Kernochan, 103 U. S., 562.

Pacific R. R. *vs.* Ketchum, 101 U. S., 289.

Barney *vs.* Latham, 103 U. S., 205.

Carson *vs.* Hyatt, 118 U. S., 279, 286.

Brown *vs.* Murray, Nelson & Co., 43 Fed., 614.

Old Colony Trust Co. *vs.* Atlanta R'y Co., 100 Fed., 798.

Tug River Coal & Salt Co. *vs.* Brigel, 67 Fed., 625.

The proposition, as approved in the foregoing authorities, is thus stated:

"In determining between whom the controversy really exists, the court is not bound by the title of the cause, or by the form of the pleadings, but should examine the record, ascertain the matter in dispute, and arrange the parties on opposite sides of the same *according to the facts*, no matter what their technical place as plaintiffs or defendants may be."

We submit that no sufficient reason is alleged in this cause for making Huguley a defendant instead of a complainant. It is not stated that he had ever been requested to act or had refused to act, but *only* that he was adversely interested. He was not really, as matter of *law*, adversely interested. Whatever interest he had was as a purchaser under the State sale, and this is shown to have been *in full recognition of and subordination to the trust.*

36. Forty of the bonds, aggregating $20,000 in amount, secured by the mortgage in this case were excluded from benefits by the decrees in the case that were secured to the others, and the holders and owners of none of them were made parties to the suit.

In Ribon *vs.* Railroad Co., 6 Wall., 450, it is said:

"But if the interests of those present and of those absent are *inseparable*, the obstacle is *insuperable*. * * *

"The rule, as we have stated it, is well settled in equity jurisprudence."

Citing—

Caldwell *vs.* Taggart, 4 Pet., 190.
Story *vs.* Livingstone, 13 *id.*, 359.
Marshall *vs.* Beverley, 5 Wheat., 313.
Coy *vs.* Mason, 17 How., 580.
Russell *vs.* Clark's Ex'rs, 7 Cranch, 69.

"The *trustees* in the five mortgages, which were foreclosed, should have been made parties. *Their* presence as such was *indispensable.*

"If the sale should be annulled they might be in the situation of the plaintiff who collects a judgment which is afterwards reversed. He may be called upon to refund and compelled to do so. A question would also arise whether the consideration of the agreement under which the five and a half millions of bonds were paid had not failed, and whether all the bondholders and stockholders who participated in the proceeds of the sale should not be required to refund. If either or both were too numerous for all to be brought before the court, *some might have been made parties in their own behalf and as the representatives of the others.*"

Story's Eq. Plead., 7th ed., secs. 120, 121, 128, 131, 132, and notes.

"The bill in *this* respect is *fatally defective,*" etc.

37. In one of the first opinions ever rendered in this suit by Judge Newman, viz., upon "taxation of counsel fees, etc.," he said:

"This bill was filed because of non-payment of interest, which, under the contract, gave the right to foreclose, and a serious question was made by the pleadings and the proof in the case whether or not the right to foreclose existed at the time the bill was filed. * * * No right can be claimed here in this respect because of any liability incurred by the trustee in the performance of his duties, because it appears from the evidence that the trustee required an agreement that he should not be responsible for counsel fees before he would *allow the use of his name* in the suit; and the case has really more the appearance of the holders of these obligations proceeding through the trustee, *as a mere nominal party,* than the act of a trustee in the discharge of the duty incumbent

upon him by virtue of a trust which he had assumed and agreed to carry out, etc."

1st Printed Record, pp. 158, 159.

38. "The rule in equity as to parties defendant is that all those whose interests will be affected by the decree sought to be obtained must be before the court; and if any such persons cannot be reached by process, the bill must be dismissed."

Ribon *vs.* Chicago, etc., R. R. Co., 16 Wall., 446; 21: 367.

"Where a decree can be made as to those present without affecting the rights of those who are absent, the court will proceed; but if the interests of those present and of those absent are inseparable, the objection of the absence of the latter is insuperable.

"The absence of parties whose rights would be in effect determined, even though they might not be technically bound, in subsequent litigation in some other tribunal, is sufficient to prevent the Supreme Court of the United States from proceeding to dispose of the case in the exercise of its original jurisdiction."

California *vs.* Southern Pac. Co., 157 U. S., 229; 39: 683.

39. "Although the averment as to citizenship may be sufficient, yet if it appear that that averment is *untrue*, it is the duty of the circuit court to dismiss the suit; and this court, on appeal or writ of error, must see to it that the jurisdiction of the circuit court has *in no respect been imposed upon*."

Morris *vs.* Gilmer, 129 U. S., 315, 325.

Nashua Railroad *vs.* Lowell Railroad, 136 U. S., 356, 374.

Cameron *vs.* Hodges, 127 U. S., 322, 325.

Williams *vs.* Nottawa, 104 U. S., 209. (See also 104 U. S., 450.)

"As remarked in Bernard's Township *vs.* Stebbins, 109 U. S., 341, 353, it has been the constant effort of Congress and of this court to prevent the discrimination in respect to suits between citizens of the same State and suits between citizens of different States, established by the Constitution and laws of the United States, from being evaded by bringing into the Federal courts controversies between citizens of the *same* State."

Anderson *vs.* Watt, 138 U. S., p. 694.

40. "Judgment of circuit court will be reversed by the Supreme Court of the United States for a defective averment of citizenship, upon its own motion, and the case remanded."

Denny *vs.* Pironi, 141 U. S., 121; 35:657.

Anderson *vs.* Watt, 138 U. S., 694; 34:1078.

41. The appeal to the Supreme Court from the last decree or judgment of the circuit court of appeals had the effect to stop further litigation in the circuit court of the northern district of Georgia until it is determined.

Draper *vs.* Davis, 102 U. S., 370.

Ensminger *vs.* Powers, 108 U. S., 292.

Keyser *vs.* Farr, 105 U. S., 265.

Citizens' Bank of Wichita *vs.* Farwell, 56 Fed., 539.

Marvin *vs.* Lawler, 91 Fed., 693.

102 U. S., 370; 108 U. S., 293, 302, 303.

105 U. S., 265; 56 Fed. Rep., 539.

91 Fed. Rep., 693.

VI.

42. In the decree of foreclosure, March 30, 1895, the "owner" of the property was given no time within which to redeem, and the owner was the Huguley Manufacturing Company, which was held to be such in the opinion of the circuit court of appeals in this cause.

The capture of this mortgaged property by the Galeton Cotton Mills, which in the beginning had no other *raison d'être*, has been at the expense of justice and a cruel expenditure in costs, charges, and fees that should never have been imposed upon the property and the bondholders by the act of the trustee. It has caused the circuit court to sell property over which it had no jurisdiction, and to convey the same by the deed of a commissioner of the court.

It ordered an account of rents and profits to be taken by Felder, special master, and decreed their payment to the mortgage debt, but forced the sale of the property, against objection, before that account could possibly have been taken to ascertain the amount due for rents and profits from the Galeton Cotton Mills, that represented a syndicate of part of the bondholders.

The sale of the property so made was "confirmed in all respects" by the decree of the court overruling exceptions thereto on the 25th of June, 1896, "to L. Lanier, trustee for the holders of the bonds," with a *placebo* to the Huguley Manufacturing Company, which was taken away by subsequent decrees of the court. This sale was again affirmed in the decree rendered on the 23d of February, 1898 (Record, page 47), and again on the 11th of April, 1898 (Record, page

56); and the proceeds of the sale of May 5, 1896, under the decree of March 30, 1895, were applied to the mortgage debt and costs, charges, and expenses by the decree of the court rendered June 4, 1898. On the 15th of October, 1898, the sale of May 5th, 1896, was again confirmed and a deed ordered to be made to L. Lanier in his own right, or to his appointee, on the payment into court, in cash, of $43,433.36, thus giving to him the benefit of the rents and profits due from the Galeton Cotton Mills, as ascertained and allowed by the previous decrees of the court, and leaving the bondholders, who were unwilling to follow further his plan of capturing the property, to litigate for their rights under the mortgage. Lanier and those who still followed him thus got an absolute deed to the property, freed of all incumbrance, and were allowed all the costs and expenses of the suit, including Robinson's fees, to stand as a charge against the fund to be paid into court by Lanier. This was a total departure from and perversion of the decree of March 30, 1895, thrice affirmed by the circuit court and twice affirmed by the court of appeals.

This tergiversation raises a Federal question as to the force of the statutes of the United States as to the sale of real estate under decrees of foreclosure, and as to the power of a circuit court to disobey the mandate of the circuit court of appeals.

JOHN T. MORGAN,
Attorney for Appellants.

Supreme Court of the United States

OCTOBER TERM, 1901.

No. 94.

THE HUGULEY MANUFACTURING COMPANY, WILLIAM T. HUGULEY, AND THE ALABAMA AND GEORGIA MANUFACTURING COMPANY

vs.

THE GALETON COTTON MILLS, J. J. ROBINSON, TRUSTEE, AND L. LANIER.

Brief of Appellants in Reply to Brief and Argument of Appellees on the Motions for Certiorari and to Dismiss the Appeal.

PART I.

REPLY TO BRIEF OF APPELLEES ON THE MOTION FOR CERTIORARI.

1. If this appeal is sustained, or if the Supreme Court will exert its unquestioned power of review in the case, it is indispensable to justice and lawful procedure in the cause that the pleadings which set forth the issues and proofs in the

cause and show the facts as to the jurisdiction of both the inferior courts should be included in the record now before the Supreme Court.

This proposition is admitted in effect in the brief of appellees.

2. The appellees admit that "the transcript of the record in the present case is so defective as to make it impossible to present a statement of facts drawn exclusively from the record of the case." In this statement all the parties agree, and the transcript sent up by the clerk of the circuit court of appeals states that "the foregoing 132 pages, numbered from *a* to 131, inclusive, contain a true copy of the record *upon which the cause was heard* in the United States circuit — of appeals, and all the proceedings had in said court, including the opinion of the court, in the case of The Huguley Manufacturing Company and Alabama and Georgia Manufacturing Company, appellants, *vs.* The Galeton Cotton Mills and J. J. Robinson, trustee, &c., appellees, No. 798, as the same remains upon the files and records of said United States circuit court of appeals," attested by the signature of the clerk and the seal of the court on the 15th day of May, 1900.

This transcript, however, sets forth the citation and its service on pages that follow the certificate of the clerk, as late as May 30, that are not certified.

On the first six pages of the transcript agreements and disagreements of counsel are set forth that were "filed" in the clerk's office of the circuit court on the 14th day of January, 1899, after the appeal had been allowed by Newman, judge, on the 2d of December, 1898 (Record, p. 79). Those agreements

of counsel related to the record upon which the cause should be heard on that appeal in the circuit court of appeals, and did not exclude from that hearing any of the pleadings or proofs on which the cause between the original parties to the suit had been heard and determined in the circuit court.

Acting upon that agreement, Justice Shelby, in deciding the cause, delivered the opinion of the court, in which it is stated that "a bill was filed in the circuit court of the United States for the northern district of Georgia to foreclose a mortgage, a decree of foreclosure rendered, and on appeal to this court the decree was reversed" (13 U. S. App., 359; 59 Fed. Rep., 690).

This bill does not appear in the transcript, and no proceeding under it is set forth, except by reference to the action of the circuit court of appeals.

The petition of the Huguley Manufacturing Company to restore the property to them which had been sold under a decree that was reversed afterwards is not set forth in the transcript, although Judge Shelby found that a decree had been rendered upon it, which, on appeal, had been affirmed in the circuit court of appeals.

A "mortgage or deed of trust" to J. J. Robinson, trustee, made on the 1st day of January, 1884, on which this suit is based, as found by the circuit court of appeals, is not in the transcript.

In the findings of the circuit court of appeals is the important statement that, subsequently to the date they state that "the property embraced in the mortgage was sold under a decree of a State court, subject to the mortgage," and that "under this sale the Huguley Manufacturing Company became the purchaser and owner of the

property, subject to the incumbrance of the mortgage for $65,000, it was placed in possession of the property."

Other facts are found by the circuit court of appeals and other proceedings in the cause in addition to those above stated, as to all of which there is nothing in the transcript before the court to show that they rested upon any pleading or proceeding or proof in the case in the circuit court.

3. This transcript of the proceedings had in the circuit court of the northern district of Georgia before the appeal of December 2, 1898, was taken, opens with the mandate of the circuit court of appeals, dated February 26, 1896, and it omits everything before that date in the case instituted by the bill which was filed on January 21, 1891.

Therefore the certificate of the clerk on this transcript is contradicted by the statements of the circuit court of appeals in their opinion and decree in this case.

4. If certiorari or other mandatory order for the completion of the record and for correcting the repugnancies therein that were pointed out in the motion of the appellants is denied for any cause, the appeal will still stand because this court will not presume that the circuit court of appeals has heard and determined a cause on appeal from the circuit court and has affirmed the decree because of the incompleteness of the record sent up to it from the circuit court, when the court say in their opinion that "the real controversy in the present litigation is about the rents of the property during this period," and go on to state the facts and the law upon which they determined that controversy.

If the certiorari is refused and we must try this appeal on

the fragmentary record now before the court, the facts that even thus appear sustain the point that the circuit court had no jurisdiction, using the word as the synonym of power, to render its decree of March 30, 1895, and that said decree, on its face, violates the law, and what appears in the transcript, if that is all the record in the cause to which the appellants can be allowed to look, shows that the circuit court of appeals had no jurisdiction to render any decree upon the record that was brought before it on the appeal from the decree of the 30th of March, 1895, or any decree based upon it after that date, for the reason above stated, and because none of said decrees were final in any legal sense.

The appellees agree fully with all that is said in the appellants' brief as to the "fatally defective nature of the transcript of record filed in this court," but they insist that "before granting the appellants' motion for a writ of certiorari to complete the transcript, the court should be satisfied that some *advantage* will be gained by such a course, and that there is some sufficient reason for the delay in making the application."

All the "advantage" the appellants claim is that the court shall have before it the transcript of the record in the cause on which it was heard and determined, and not a transcript of "a fatally defective nature." To deprive the appellants of that right, on the ground that it would be of no advantage to them, is to prejudge the case, and to determine what are the rights of the appellants and whether they can succeed upon any of their assignments of error or whether it would benefit them to do so before the record which shows their rights and their causes of complaint is before the court.

5. The Supreme Court has never denied to an appellant the right to a certiorari, asked for in good faith and not for delay, when the transcript of record certified by the clerk of the inferior court *showed upon its face that it was false*, or that it was imperfect as to any of the pleadings or proofs in the case.

In this case the certificate of the clerk to a transcript "of a fatally defective nature" also contradicts the statements in the opinion of the circuit court of appeals as to the pleadings and proofs in the case that were before the court for consideration on the hearing and upon which they rendered the decision in the case.

As to the alleged laches of the appellants in moving for certiorari, the proper statements will be made, accompanied by proofs and by certificates under the hand of the clerk and the seal of the circuit court of appeals, showing that the difficulty and embarrassment in obtaining a hearing in this cause on a correct transcript has always lain at the door of the appellees.

6. A very clear indication of the "advantage that will be gained" by a certiorari to complete the record in this case is that the Supreme Court will consider the assignments of error in the appeals in this case which the circuit court of appeals rely upon as being finally determined in the cases cited from the Federal Reports in volumes 56 and 72.

If the Supreme Court has the jurisdiction of this case on this appeal, "or otherwise," those assignments of error, made part of the record in the circuit court by statute, will come up for consideration *de novo*. They are not in this transcript, but they seem to have caused a laborious effort

on the part of the circuit court of appeals in finding reasons for overruling them. A new trial on those assignments of error, if the appellants are allowed that justice, is likely to bring them "some advantage."

And the 56 assignments of error filed in the circuit court on the 2d of December, 1898, and served on the counsel for the appellees, if they are heard and considered on this appeal by the Supreme Court, will have "the advantage" of having been heard or considered for the first time in any court. The circuit court of appeals refused to consider them or any of them that did not relate to the rents of the property during the period of three years and eight months between the sale under the decree that was reversed and the sale under what the court calls the "second foreclosure."

The court says, "the real controversy in the present litigation is about the rents during this period." "These are the only substantial questions in the case." "The material assignments of error relate either to the statement of the account before the master or to the application of the rents and profits to the payment of the mortgage debt. We are relieved from stating these questions and the facts relating to them by the opinions of the learned judge who rendered the decrees appealed from in the circuit court."

This refusal to pass upon the assignments of error was called to the attention of the court in a petition for rehearing there filed, which the court overruled (Record, pp. 96 to 104).

Des Moines Nav. Co. *vs.* Homestead Co., 123 U. S., see page 555.

The appellees expect the "advantage" of having the questions made in their assignments of error passed upon by an appellate court on the hearing of this appeal.

It would benefit William T. Huguley as trustee in the deed of trust, against whom no valid decree in this case has ever been rendered, to have a judicial ascertainment of his rights and duties as trustee, and whether his title to the trust property has ever been divested or in any way affected by any decree in this cause, and whether any decree in this case as to him was "proper to be made" or was ever made by the circuit court under the rule established in Thompson *vs.* Wooster, 114 U. S. Rep., 104.

7. In demonstrating the disadvantage of a certiorari to the appellees and the costs it would impose on the appellants without advantage to them, and to inform the court of the want of merit in the case that the certiorari will bring before the court, the counsel for the appellees state in their brief that "this case is a bill in equity filed in the circuit court of the United States for the northern district of Georgia on January 21, 1891." No such bill appears in the transcript. If such a bill exists it must disclose a ground of equitable jurisdiction and for relief against "the Huguley Manufacturing Company" that is found by the circuit court of appeals to be "the purchaser and owner of the property, subject to the mortgage."

As against William T. Huguley, trustee, as to whom there is an alleged decree *pro confesso*, signed by the counsel for the complainant in the equity suit, that was never mentioned by the court in any decree or order in the cause, it must appear that the facts stated in the bill in distinct allegation

and not in the alternative are such as to sustain the decree that is prayed for in the bill, and as to all the parties to the suit it must appear from the decree that was rendered by the court on the 30th of March, 1895, that the cause was then at issue.

If that decree and those that follow it in the transcript before the court were made when the cause was not at issue, it would be to the "advantage" of all who are concerned in the suit and to the court and the cause of justice that a certiorari should issue to bring that "bill in equity" before the court, with the proceedings under it, that it may be seen whether the decrees rendered upon it are valid.

8. The appellees inform the court in their brief that "the transcript of the record in the present case is so defective as to make it impossible to present a statement of facts drawn exclusively from the record." In this the appellants agree, but they insist that it is not their fault that such is the case.

9. Then, proceeding to inform the court as to facts that are not found in the pleadings and proofs in the case, the appellants make references to certain pages of the transcript, as showing those facts, that are not thereby sustained, and some of their statements are not made upon information gained from the transcript in the case now before the court.

Neither the terms of the trust deed nor the facts in relation to the alleged default in the payment of interest on the bonds secured by it or the demand of payment are correctly stated in the brief of the appellees.

The "petition (not included in the transcript of the record)

asking that the purchaser, who had been in possession under that decree since the time of the first sale, be required to account for the rents and profits" is not correctly stated in the brief of appellees as to the facts alleged in said petition or as to the prayer of the petition.

Next to the pleadings and proofs in the cause, based on the bill in equity, this petition, and the pleadings thereon and proceedings thereon, is the most important part of this case, and is that upon which the last decree of the circuit court of appeals in this case is based. Upon the litigation that was the result of that petition about 80 or 90 per cent. of the vast costs and fees and charges in this case arose.

It was a collateral proceeding that related only to matters of account between two corporations, both claiming the right to the possession of the trust estate, as to the rents and profits of the property from 1892 to 1899, one of which corporations, the Galeton Cotton Mills, did not exist until after the dispossession of the other under a sale of the property by a decree in this cause, which was reversed at a later date.

The cost of that proceeding was placed upon the bondholders, through the assistance of Robinson, trustee for them and a director of the grantor in the trust deed—the Alabama and Georgia Manufacturing Company—and L. Lanier, at whose request Robinson instituted this suit. Lanier was acting as the trustee of a majority of the bondholders at the time of these transactions, and the evidence in the cause shows that he was using this suit to defraud them.

No bondholder was ever made a party to this suit in the main cause or in the collateral proceedings under it. They were the worst sufferers from the litigation, losing about 30 per cent. of their bonds, and Lanier, who pretended to rep-

resent them, was securing to himself the property, free of incumbrance, that was worth more than twice the debt secured by the trust deed. These facts, some of which are outside of the transcript now filed in this case, but all of which are established in the pleadings and proofs in this case that are of record in the circuit court of the United States for the northern district of Georgia, when added to the statements made in the brief of the appellees, show that a case exists of record between these parties that justly appeals to the powers of the Supreme Court in this case, and that some mandate from this court is necessary for the protection of rights that have been unlawfully sacrificed.

10. It appears from the agreement of counsel and their correspondence in reference thereto, on pages 1 to 6 of the transcript filed in this cause, that an effort was made and a plan was adopted for excluding from the record of the circuit court that was to be sent up on the appeal of December 2, 1898, which was taken by the two corporations, the Alabama and Georgia Manufacturing Company and the Huguley Manufacturing Company, and the agreement was finally reached, after much contention, "that the clerk, in making up the record, may omit therefrom the record made up and transmitted on the two former appeals in this case to said circuit court of appeals. And either party on the hearing of this appeal may be at liberty to refer to any such parts of the record of said former appeal, as they may see proper. January 14, 1899."

Appellants now have in their possession duly certified copies of the said records made up and transmitted in said two former appeals in this case, which are produced in

court and leave is hereby asked to file the same in this cause.

Appellants also produce in the Supreme Court a record of extracts from the proceedings in the circuit court of appeals for the fifth circuit, certified by the clerk of said court, under his signature and the seal of the court, dated October 6, 1899, containing 210 pages.

This certified transcript was filed with the petition for certiorari in this cause, heretofore denied.

The said certificate shows that the clerk of said court, in his certificate to the transcript in this cause, was in error when he certified that "the foregoing 132 pages, numbered from *a* to 131, inclusive, contain a true copy of the record upon which the cause was heard in the United States circuit — of appeals, and all the proceedings had in said court, including the opinion of the court, in the case of The Huguley Manufacturing Company and Alabama and Georgia Manufacturing Company, appellants, *vs.* The Galeton Cotton Mills and J. J. Robinson, trustee, &c., appellees, No. 798, as the same remains upon the files of said United States court of appeals."

The true record on the hearing of said appeal was, under the agreement of counsel, the two records certified by the clerk of the circuit court of the northern district of Georgia, the first on the 21st of November, 1892, and the other on the 27th day of July, 1895, and a copy of the original print, made up under an additional agreement of counsel, on the 21st of February, 1899, as follows:

"Huguley Manufacturing Company, appellant, *versus* Galeton Cotton Mills. In court of appeals. In this case it

is agreed that the appellants print the first volume of the record brought up on the present appeal down to and including page 156. The court to order such other portion of the record as it may deem proper or necessary to be hereafter printed."

Which was signed by counsel for both parties.

Appellants now produce in court a copy of the original print, made under said agreement.

11. Including the evidence taken on the reference before the master on these collateral questions between the Galeton Cotton Mills and the Huguley Manufacturing Company, in which volumes of cotton books and expense accounts and account of sales and vouchers and receipts were produced, the entire record in this case covered many hundreds of pages, which merely incumber the record with matters that are of no consequence in this cause on any question presented in the assignments of error. In that controversy no one in the suit but those two corporations and their owners had any interest, except that the claim was made on behalf of the bondholders, but not by them, that the amount found due for rents and profits from the Galeton Cotton Mills should be applied to the payment of the bonds.

The purpose of these agreements of counsel was to avoid the expense of making transcripts of these voluminous papers and of printing the same.

12. The transcript, as it is certified to this court, if it is held to be the actual record of the circuit court on which the case was heard in the circuit court of appeals, cannot

support the decree of affirmance in the circuit court of appeals.

It does not present the necessary elements of a judicial proceeding in equity, for there are no pleadings or proofs in the case, if it can be called a case, antecedent to the decree of the 30th of March, 1895. From that decree back to the beginning of the suit there is no record to show anything that had occurred.

13. The dismissal of the appeal in this case on the record on file in the Supreme Court would open the decree of the circuit court of appeals to collateral attack for the want of jurisdiction.

That record does not show any element of jurisdiction in the circuit court of appeals to affirm any judgment or decree or order of sale or of confirmation found in it or set forth in its recitals.

If that is the actual record, the whole proceeding in the circuit court of appeals was *coram non judice*. If it is not the actual record, it is because the circuit court of appeals has failed to provide so as to identify the true record. It has decided a cause in which there is no judicial record.

The parties had no right, under their agreement, to do this by motion or otherwise without the consent of the court.

It is a record of the court, not of the parties, necessary to show and support the jurisdiction of the court and the rights of the parties, and it was as clearly the duty of the court to see that the record in the cause presented the case truly and fully as it existed as it was to hear and consider the case.

14. On the records and files of the circuit court of appeals there is no record of the proceedings in this case, identified in a proper way, to which the clerk can certify under the law, and there can be none until that court or the Supreme Court has ascertained upon what record of the circuit court the appeal was actually heard and determined in the circuit court of appeals.

15. On the record in the circuit court of appeals in this case from the Georgia circuit court, as it is presented in the transcript certified to the Supreme Court, the circuit court of appeals could not affirm the judgment. It could only dismiss the case.

Nashville *vs.* Cooper, 6 Wall, 247.

Continental Insurance Co. *vs.* Rhoads, 119 U. S., 237.

16. The errors in the record showing discrepancy or contradiction between the minutes of the court and the other parts of the record as to the identity of the case that was in fact heard by the court can only be corrected in the circuit court of appeals.

Goodenough Co. *vs.* Rhode Island Co., 24 Fed., 368.

11. Each of the judgments of the circuit court rendered in the progress of this case and affirmed in the circuit court of appeals became judgments of the appellate court on which a mandate could issue. They were binding on the parties and were obligatory on the circuit court.

But they were of no effect upon the parties or the circuit court if the circuit court of appeals had no jurisdiction of the case on the record sent up with the appeal.

In each of the decrees of the circuit court that were affirmed in the circuit court of appeals the record shows that they were not final decrees. In each of them there were matters left to future adjudication that would alter the rights ascertained by the decrees. These decrees could not be executed without further judicial action.

Dodge *vs.* Twell, 135 U. S., p. 234.

12. But these decrees were made final as to the further action of the circuit court by their affirmance in the circuit court of appeals, and prevented it from afterwards modifying them by reason of any facts that might show that they were rendered improvidently or were incapable of being executed.

The appellants may even be estopped by their appeals in this case from afterwards asking the circuit court of appeals to disregard or to overrule their decisions, but they are not estopped from asking the Supreme Court, on appeal or "otherwise," to disregard or to correct those decrees, and, above all, nothing that was done by the appellants could affect the power of the Supreme Court to correct the errors in the proceedings of the circuit court of appeals that are so confusing and even mischievous.

Grand Southern Fire Proof Hotel Co. *vs.* Jones, 177 U. S., page 452.

Southern Railway Co. *vs.* Postal Telegraph Co., 179 U. S., page 643.

Loeb *vs.* Columbia Township Trustees, 179 U. S., page 479.

This court exercises on appeal, or certiorari, "or otherwise," supreme control over the entire case and all decrees at any time rendered in any case over which it has jurisdiction, in which it reverses or affirms the decree of the circuit court or of the circuit court of appeals, or reverses the decree of one court and affirms the decree of the other, "as to justice may seem meet."

13. A Federal question was presented in this case on the face of the bill that did not depend alone on the diverse citizenship of the parties to the suit. It depended on the geographical location of the land which was alleged to be in the possession of the Huguley Manufacturing Company. The bill sought to place this land within the possession and control of the court through a receiver, and to sell and convey it to a purchaser under the decree of the court and by its agent.

The larger portion of the land is shown by the bill and a deed of trust, made a part of the bill, to be located in Alabama, and a smaller portion in Georgia. The bill states, according to the opinion of the circuit court of appeals, that under a deed of trust "for the purpose of securing certain negotiable bonds of said company"—the Alabama and Georgia Manufacturing Company—"in the principal sum of sixty-five thousand dollars and interest thereon" William T. Huguley, W. C. Yancy, and J. J. Robinson, the complainant, were the trustees to whom the deed was made; that W. C. Yancy was dead, and that said Huguley "is interested adversely to your orator as the trustee of said bondholders."

This is not a statement, or even an intimation that Huguley was interested adversely to the bondholders.

PART 2.

THE REPLY TO THE BRIEF OF APPELLEES ON THE MOTION TO DISMISS THE APPEAL.

1. No courts are sovereign, under English or American jurisprudence. They cannot create laws, and must derive all their powers from the laws.

If their powers are general as to the expounding, application, and enforcement of the laws, their jurisdiction is presumed, unless the contrary appears when a suit or petition is presented to a court lawfully constituted; but the courts of the United States, that derive their powers from acts of Congress, are of restricted jurisdiction, and their power to render judgment in a cause must appear in the record of their proceedings.

When they have jurisdiction they have no discretion to refuse a legal right that they have the power to protect.

2. When the record in this case is fully brought before the court, it will appear that a number of the bondholders whom Robinson assumed, as trustee, to represent in the cause in which he is the sole complainant, refused to permit him to file the bill in this cause, and they claim that he has lost them 30 per cent. of their bonds, which were well secured by the trust deed, by the imposition of heavy and unjust charges upon the trust estate in the form of costs, expenses, commissions to Robinson and others, and attorneys' fees, and that none of the bondholders were made parties to the suit or otherwise given the opportunity to protect their rights or interests.

3. It will set forth a bill in equity that is the foundation of the suit, and will show that it contains no equity.

4. It will show, as the record now before the court shows, that the circuit court of the northern district of Georgia, by its decree upon said bill and in accordance with its prayer, seized lands in Alabama and sold them, by its commissioners, and put the purchasers in possession; and it will show, by decrees and papers not in the transcript now before the court, that the court protected the possession of the purchaser under its decrees from 1892 to 1898 as that of mortgagee in possession, although its decree of foreclosure and sale was reversed and annulled in 1892. (See the authorities collected on pp. 83 to 89 of former brief.)

5. It will show that no fact or reason or excuse was set up in the bill for this assumption or this excess of jurisdiction, or for the violation of the laws and the autonomy of Alabama in selling lands located in that State under its judicial decree.

6. It will show that a decree *pro confesso* was entered on the order book of the clerk of said court against William T. Huguley by the attorneys of Robinson, which was never entered or allowed by the court, and that this cause has never been at issue as to said Huguley.

7. It will show that when the bill was filed and when the decree of foreclosure and sale was made in said court that the whole trust estate was held subject to pay the interest on the bonded debt in the hands of Fisher as receiver, ap-

pointed by the superior court of Troup county, Georgia, under a decree of said court, in a case in which said Robinson was interested, in which the Alabama and Georgia Manufacturing Company was a defendant, and that the property was sold subject to the mortgage which is the foundation of this case, and that said receiver was directed by said court, in its decree, to continue to hold the rents and profits of said property, to pay the interest on the bonds, and collect and apply the same, which order was in full force when the bill was filed in this case. In this bill Robinson prays for a receiver to hold said property, collect the rents, and to sell the same to pay the interest on the debt, and to mature the principal debt, and pay it, thirteen years before it fell due according to the provisions of the deed in which Robinson is trustee.

8. It will show that the Huguley Manufacturing Company had purchased that property only about two years before this bill was filed, and they paid $66,000 for it, and the argument on the facts in evidence will be sustained by the proofs in the record, that the bill in this case was filed at the instance and request of L. Lanier, who was then a stockholder and director in the corporation that executed said deed of trust, and that his motive and purpose in the proceeding was to capture the property and convey the title to the Galeton Cotton Company, an Alabama corporation chartered and organized after the first sale of the property under a decree in this cause that was afterwards reversed, and that he was president and principal owner of that corporation.

9. That Lanier succeeded in his plan, and when the Huguley Manufacturing Company was deprived of the property under the order of the court in this cause, based on said purchase, said Galeton Cotton Mills was placed in possession thereof under a deed from said Lanier.

10. That under a subsequent decree of foreclosure in this cause said Lanier again became the purchaser of said property, in connection with Dallis and Kirby, as trustees for certain bondholders, and the sale was confirmed by the court, and, yet later in the progress of the cause, on the 15th of October, 1898, the terms of said sale were changed, and a deed was ordered by the court to be made and delivered to said Lanier in his own right or to such person as he might designate.

11. That said last-mentioned decree changed other decrees in this cause made at previous terms of the court as to the amounts recovered and as to the persons to whom they were payable, and left other matters open to future litigation as to the proceeds of said sale, when the same should be paid into the registry of the court; and said decree of the 15th of October, 1898, together with previous decrees in this cause, was affirmed by the decree of the circuit court of appeals, from which judgment the appeal in this cause was taken and is now pending in the Supreme Court.

12. That the Huguley Manufacturing Company presented a petition in this cause against the Galeton Cotton Mills and others, praying restitution to the possession of the property from which they were ejected under the decree that was

afterwards reversed, and in that way said Galeton Cotton Mills were brought into the suit as a party to the proceedings.

13. Said petition does not appear in the transcript now before the court, but an amendment to it is in this record. The costs and charges in the case, amounting to a very large sum, and the loading of the record with an immense number of papers and books of business accounts and the taking of voluminous depositions grew out of an order of reference in the case that related alone to the interests of the Huguley Manufacturing Company and the Galeton Cotton Mills in the rents and profits of the property for three and a half years after it was in the possession of the Galeton Cotton Company.

14. The transcript of record now before the court is made up almost exclusively of the proceedings in this case on this collateral subject.

15. Upon this case thus stated, and as it will appear from the record when completed, and established by two transcripts of the record in this case, filed with this brief and marked numbers 1 and 2 respectively, the appellants have filed with the clerk of the Supreme Court their assignment of errors, which will apply to the record when it is completed; or, if the writ of certiorari is denied, it will apply to the record as it is now before the court, which has been printed.

16. *The jurisdiction* of the Supreme Court to hear and determine this cause by appeal, or on certiorari, or otherwise,

and to reach all the decrees in the case in the circuit court, or in the circuit court of appeals, is complete, plenary, and supreme, without reference to any stage or condition that the case may be in because of the final or the interlocutory nature of those decrees.

Forsyth *vs.* Hammond, 166 U. S., 506.

17. If the decree of affirmance in the court of appeals is not "absolutely final," so as to bar the appellate jurisdiction of the Supreme Court, *the right of appeal* exists, as a remedy provided by law, in favor of the party to the suit that complains of the decree of the circuit court and of the decree by which it is affirmed.

18. The allowance of an appeal removes the case into the appellate court in virtue of a right that cannot be denied arbitrarily. Mandamus will lie to enforce it.

Ex parte Jordan, 94 U. S., 248.

19. The allowance of an appeal from the judgment of the circuit court of appeals places the record of that court and the record that supports it in the Supreme Court, and all mandates in cases appealed to the Supreme Court from the circuit court of appeals are sent directly to the circuit courts in which the case originated under the statute.

Texas Pacific Railway *vs.* Anderson, 149 U. S., 239.

20. Under the judiciary act of 1891, appeals from the circuit court to the circuit court of appeals can only be taken from judgments that are final in the cause.

21. If a decree of the circuit court that is not final in the cause is taken by appeal to the circuit court of appeals, that court should dismiss it; but if the appellate court proceeds to hear and determine the case on its merits and affirms the decree of the circuit court and issues its mandate to proceed in the cause according to its opinion therein rendered, there is a record in the court of appeals, and a decree that is erroneous on the face of the proceedings, from which the right of appeal to the Supreme Court is granted by the statute, unless that right is cut off by the finality of the decree of the circuit court of appeals.

McClish *vs.* Roff, 141 U. S., 661.

United States *vs.* Jahn, 155 U. S., 109.

22. The appeal in this case from the decree of the circuit court of appeals and the appeal on which that decree is based were allowed without restriction, and present the whole case on both records for review by the Supreme Court.

Chappell *vs.* The United States, 160 U. S., 499.

23. The only question of jurisdiction that can be raised as to the power of the Supreme Court to entertain the appeal is, that under section 6 of the judiciary act of 1891 the decree of the circuit court of appeals is final and cannot be reviewed on appeal in a case "in which the jurisdiction is dependent entirely upon the opposite parties to the suit or controversy being aliens and citizens and citizens of the United States or citizens of different States."

It is not intended by this classification of cases, in which decrees are to be treated as final, to deprive the party in whose favor an appeal has been duly allowed of the right

to assign errors on that decree that present a want of power in the court of appeals to decide the merits of cause in which the decree of the circuit court is not final, and thereby to make it final.

24. This clause of the statute, above quoted, has no express reference to the final or the interlocutory character of the decree of the circuit court of appeals. It only provides that it must be a decree rendered in a case in which the circuit court has jurisdiction, on the sole ground or "entirely" in consequence of the diverse citizenship of the parties to the suit or controversy.

It is the jurisdiction of the circuit court to entertain the suit or controversy that determines the finality of the decree of the circuit court of appeals as a bar to *the right* of an appellant to a hearing, on appeal in the Supreme Court, because the statute requires the circuit court of appeals to remand the case to the inferior court in every case finally decided in that court; but it is not the character of the suit that determines the jurisdiction of the appellate court to hear and determine the appeal, or that protects its decree against the right of a party to the suit to appeal to the Supreme Court. Its decree must be adjudged on appeal by its own character, and cannot depend "entirely" upon the citizenship of the parties to the suit for shelter; as if the circuit court of appeals should reverse a decree of the circuit court and should refuse to remand it but should dismiss the cause in which the jurisdiction is in issue on the question of citizenship.

25. To be final, the decree of the circuit court of appeals must first be valid in law. If the decree is extrajudicial,

it cannot be "final." If it affirms a decree that is not final; when that decree of the circuit court is made final, it may be taken to the Supreme Court on a question of jurisdiction, and that court can proceed on that appeal to adjudge every question in the case. That right of appeal cannot be barred by lapse of time or waived before a final decree in the cause is rendered. Then, but not before, it will arise under the statute. But to hold that the decree of the circuit court of appeals is final, to bar all right of appeal to the Supreme Court, is to hold that the appellate court, by its simple affirmance of a decree that is not final, can cut off all right of appeal from a decree of the circuit court in the case when it is afterwards made final.

26. The jurisdiction of every district and circuit court "is in issue" in one sense because it must be proved in every suit that is instituted; and the jurisdiction must appear on the face of the proceedings, or the court cannot proceed to final decree in the cause.

27. As to the citizenship of the parties, consent or waiver cannot give jurisdiction, and when it appears in the proofs in the case that this element of jurisdiction does not exist, the suit must be dismissed.

28. This element of jurisdiction that is always proven *aliunde* or by an admission in the pleadings can be disproved so as to oust the jurisdiction at any stage of the cause. It is so easily made an instrument of fraud upon the jurisdiction that it is open to question on appeal as it is before the trial court. This is the true reason for having that "issue" as to

jurisdiction determined at the earliest practicable stage of the suit and certified to the Supreme Court as the court of final resort.

29. Of all the grounds that could be selected to make final and beyond the right of appeal, the judgments or decrees of an inferior court of appellate jurisdiction, this is the most unsafe and least to be trusted as the final arbiter of justice. When the inconceivable value and importance of the rights and liberties that these words, "shall be final," would shut out from consideration by the Supreme Court are regarded, this precarious ground of jurisdiction places the foundations of public justice upon the sands instead of the rock of justice. If the word "final," as it is applied in this statute to the judgments or decrees of the circuit courts of appeals, means that they are conclusive, because diverse citizenship of the parties places them beyond the right of appeal or the power of review on appeal, it was a vain thing and very deceptive to empower the courts of appeals or a judge thereof *to allow an appeal in such a case to the Supreme Court.*

30. There must be and there is in this statute a field of operation for the words relating to the finality of the decrees and judgments of the circuit courts of appeals, in which they can have their full effect without imputing to them the dreadful fatality of a denial of justice to the vast number of suitors whose rights are guaranteed in the Constitution.

31. *Jurisdiction*, which alone can open the door to the petition for justice in the courts, and *not discretion*, which can close it at will, is made the especial care of this statute and ap-

peals and writs of error are provided in the fifth, sixth, and seventh sections for the determination by the Supreme Court of the jurisdiction of the trial court "in any case in which the jurisdiction of the court is *in issue*," and in other cases where no "issue" is formed as to the jurisdiction, but the question of jurisdiction arises upon the final decree, as in prize causes and convictions for infamous offenses, and "in any case in which the constitutionality of any law," &c., "*is drawn in question*," and "in any case *that involves* the construction or the application of the Constitution of the United States," and in cases of injunctions.

32. That the investigation of the jurisdiction of the trial courts shall not escape the Supreme Court in cases where the record in the case would overtax parties with burden some costs beyond their means, it is made the duty of the trial court to certify the question to the Supreme Court by this mandatory provision: "In such cases the question of jurisdiction alone *shall be certified to the Supreme Court from the court below for decision*." If the party defendant in whose behalf the question of jurisdiction is raised elects to appeal from a final decree in a case in which the question of "the jurisdiction of the court is in issue" to the circuit court of appeals and to take up the entire record for review the election is said in McClish's case to bind him; this although the sixth section of the act expressly excludes from the appellate jurisdiction of the circuit court of appeals "all cases * * * provided for in the preceding section [5] of this act, unless otherwise provided by law."

33. The jurisdiction thus denied to the circuit court of appeals includes "any case in which the jurisdiction of the court is in issue," in any trial court, and five other named cases where the jurisdiction is not "in issue" in the cause upon the pleadings, but where the question of jurisdiction arises in the cause, on the proofs, or on the face of the record, including the judgment or decree.

34. As in this case, where the fact that the lands are in Alabama is stated in the bill and admitted in the answers and found in the decree, that fact is not "in issue." The power of the court to decree the sale and conveyance of the lands is a question that is raised by the Constitution of the United States and by the statutes that create the court and confer upon it all the jurisdiction and powers that it possesses.

35. No issue could be joined by the parties that would present any contention between them, in issuable form, as to the lawfulness of such jurisdiction, and no admission of the defendants nor any agreement or waiver on their part could affect such questions.

36. The true field of operation for the words, "and the judgments and decrees of the circuit courts of appeals shall be final in all cases in which the jurisdiction [of the trial court] is dependent entirely upon the opposite parties to the suit or controversy," is found in that class of cases where the jurisdiction of the court was in issue in the trial court and a final decree was rendered in the cause and no appeal to the Supreme Court was taken, but appeal or writ of error

was taken on the whole case to the circuit court of appeals. It was meant that in that class of cases the judgment of the circuit court of appeals should be final on the facts put in issue on the question of jurisdiction, based on the parties to the suit, in the trial court, and tried and determined in that court, and brought to the circuit court of appeals on error or appeal, and there decided in favor of the jurisdiction of the circuit court.

37. There is an immense field of jurisdiction opened to the circuit court of appeals in the cases where the jurisdiction of the parties is clear and not disputed, and no other Federal question being in the case on which the jurisdiction of the court rests in law or is rested in the pleadings, their judgments are final and will be so respected by the Supreme Court.

38. Yet those judgments, while they are final until they are reversed, are still under the supervisory power of the Supreme Court, to be exerted with judicial discretion. In such cases as comprise this great volume of litigations the Supreme Court is not the exclusive guardian of justice, since the State courts are supplied with equal powers to render and enforce justice in those cases, and in such cases the Supreme Court of the United States may, by writ of error or appeal or by certiorari or "otherwise," exercise supervision over all inferior Federal courts, for reasons of obvious importance, and may reverse their decrees upon all questions, State or Federal.

39. But the Supreme Court, under the Constitution, is the supreme and paramount tribunal to exercise ar-

bitrament and guardianship of the rights of the States and the people that originate in or are protected by the Constitution and laws of the United States.

The power of the people to appeal to the Supreme Court is given by statutes, which also limit and regulate those rights, but the power of the court is largely derived from the Constitution, and its appellate powers as a court necessarily include the power and the duty of confining the inferior tribunals, State and Federal, to the legitimate limits of their jurisdiction in all cases coming before them, and especially in cases that "involve the construction or application of the Constitution of the United States."

40. It is a solecism to say that such questions are beyond the appellate jurisdiction of the Supreme Court, put into action by an appeal allowed by a court or a judge, when the Supreme Court is expressly empowered to hear and deside them on certiorari "or otherwise," as if they were brought up by appeal or writ of error. If such appeals are rejected, it is not for the want of appellate jurisdiction or because of the form of the writ that removes the cause into the Supreme Court. It is purely a matter of judicial discretion.

41. Every word in this judiciary act was selected and carefully adapted to express the exact meaning of Congress in the enactment of this substitute for the judiciary act, which had been under the closest study for more than a century. It was well to be careful and exact in the use of words in a matter so important and so delicate. A case that "involves" the construction or the application of the Constitution of the United States may be different as to the

manner of presenting it from a case in which the constitutionality of a law of the United States is "drawn in question," but the nature of the question is the same.

When the record in the case involves the construction or the application of the Constitution in the statement of the ground of the complaint, or in the prayer for judgment, or in the power of the court to decree the relief asked, or to enforce its execution by *fieri facias* or *venditioni exponas* or other mandate, it is "drawn in question" by the sworn duty of the judge and by the limitations upon his authority, because it is "involved" in the case. When the jurisdiction of the court "is in issue" in a case, the facts relating to citizenship, or other issue of fact, determine the issue, according to the weight of the evidence, in which no constitutional question is necessarily involved.

42. The determination of that issue would not involve the construction or the application of the Constitution in one case, probably in many hundreds or thousands, and, as such an issue is necessarily one of fact and is never required to be raised by demurrer, the decision of it by a court of appeals if it is reversed, may be only the granting of a new trial; and its affirmance, in the absence of an appeal on certificate to the Supreme Court, is necessarily final and is so declared in the statute.

It was so declared in this statute not in order to make final every decree of a court of appeals in all cases of diverse citizenship, or to place these courts beyond the reach of the appellate power of the Supreme Court, but to make it clear that final decrees of the circuit courts of appeal are to become final decrees of the circuit courts as to questions and issues

of citizenship when no appeal has been taken to the Supreme Court, but an appeal has been taken to the circuit court of appeals. This part of the act makes judgments rendered upon such issues as to citizenship final when otherwise they would be at least open to question, because of the appeal that is given on such questions to the Supreme Court. The real purpose of the act was to give certainty to the effect of the decrees of the circuit courts of appeal, which were made uncertain by the direct appeal given from them to the Supreme Court in all cases that involved the jurisdiction of the trial courts.

43. In this case there was no issue or dispute as to the citizenship or the residence of the parties. The court, therefore, had the admitted jurisdiction to entertain the suit in equity, it being a bill to foreclose the equity of redemption in a trust deed. But there its power, except to allow amendments or to dismiss the bill, ended. The construction and the application of the Constitution of the United States to the case barred its power or jurisdiction to grant the relief demanded, because it required the court to take lands in Alabama under its control in a proceeding *in rem;* to appoint a receiver to possess and control them, and to direct its commissioner to sell them at a place in Georgia, and because that was an intrusion upon the sovereign rights and autonomy of Alabama. To proceed under this bill to make such decrees was also a violation of the general statute laws of the United States, the validity of which is not called in question and is not in issue in the case, which prescribe and limit the jurisdiction and the judicial powers of the circuit courts.

44. No question involving a more important construction or application of the Constitution and laws of the United States could be involved in a case, and none more calculated to create general anxiety for the preservation of the form and principles of the Government, than the rights claimed in this bill in equity and the powers invoked by its prayer.

A decree was rendered upon this bill that assumes for the circuit court for the northern district of Georgia the judicial power to sell and convey lands and appurtenant water power of great value, and to place the purchaser in the possession of the property, and to hold it, since 1892 to 1898, in his own right, and to eject the owner from the possession, said land being situate in Alabama, and held in possession by purchasers of the equity of redemption, under a judicial sale, under the decree of a State court of Georgia.

45. When the courts of Alabama proceed, as they will be or have been asked, to foreclose this deed of trust in behalf of persons who own bonds that are unpaid and are not parties to this suit, it will appear, not more clearly, but more forcibly, that the decree of the circuit court in this cause is a direct and unjustifiable interference with the sovereign rights and the judicial power and authority of Alabama, and that its decrees, not final in form or effect, which have been affirmed by the circuit court of appeals, are not such final decrees as oust the jurisdiction of the Supreme Court on appeal.

And it will then appear that this court, if it shall deny relief to the appellants, will leave open a field of litigated demands, already very wide, to a much greater increase, all of which it is now in the power of this court to settle in

in its decree in this case. The questions presented are of a character that will outlive the efforts of any other court to settle them.

46. It is quite difficult to understand, according to any rule of construing statutes, why the finality of the decrees of the circuit courts of appeals, as a bar to the appellate jurisdiction of the Supreme Court, should be based upon the sole feature of the jurisdiction of the circuit courts that relates to the diverse citizenship of the parties to the suit, and that it should be confined "entirely" to that ground, if it was not intended to select between that ground of jurisdiction and the other five grounds named in the fifth section of the law, and to leave them open to the appellate jurisdiction of the Supreme Court and to the right of appeal conferred by statute upon parties to suits who are wronged by erroneous decrees of the circuit courts or the circuit courts of appeals.

47. The maxim "*inclusio unius est exclusio alterius*" applies to the construction of this part of the statute and relieves Congress of the absurd imputation that the purpose of the act was to shelter any decree of the circuit court of appeals, however wrong it might be, or however contrary to law as settled by the Supreme Court, or however dangerous an aggression it might be upon the Constitution and laws of the United States, if the decision of the circuit court was made in a case of diverse citizenship.

48. It cannot be true, in the judgment of the law, that a citizen of Alabama can sue a citizen of Georgia in a circuit

court of the United States, and can thereby cut the defendant off from objecting that the court, under the law that created it, has no lawful power to grant the relief prayed, merely because the circuit court of appeals has rendered a decree on an appeal that ignores the question of jurisdiction on other grounds involved in the suit, or that decides it adversely to the defendant in the suit.

49. Congress did not in that act intend so to provide that the defendant, because he lived in Georgia and the plaintiff in Alabama, could be sued in the United States circuit court of Georgia in ejectment for lands lying in Alabama, or in equity for the foreclosure of a mortgage on lands in Alabama.

Such jurisdiction cannot be conferred on the circuit court in Georgia by any neglect, ignorance, or mistake in pleading or practice on the part of the defendant in the suit, neither can it be so confirmed by any decree or judgment of the circuit court of appeals as to remove it out of the reach of the Supreme Court on appeal, certiorari, or otherwise.

50. While the Supreme Court has a great and benign power of review over the inferior courts and their proceedings which enables it, according to its discretion, to proceed without reference to the form of the writ or mandate it may employ to correct their errors and to control their practice and decisions, that high and delicate function of discretion is not necessarily connected with the right of appeal given to a party to the suit. It may be exerted, if the appeal is dismissed for informality or other reason, by mandatory

order or by prohibition. In such a case the court, being informed by the record before it that an error or injustice has been committed that should be corrected, for the sake of justice or for the proper order or decorum of judicial procedure, assumes the duty of taking action, *suo sponte*.

51. If the same question is brought before the court by an appeal that has been duly allowed and the appellant asks the same relief, and has given bond and security to cover the costs and damages that may result from the appeal, it cannot be said that the Supreme Court must dismiss the appeal on the ground that the statute provides that the decrees of the circuit courts of appeals *in that class of cases* shall be final, without reference to their illegality or the wrong they inflict.

52. For the sake of the public welfare and for the respect that legislatures owe to the plan and principles of our constitutional government, there should be cases of diverse citizenship in which the words "shall be final" should not be held to destroy a right of appeal or to prohibit the Supreme Court from entertaining it.

Such a case is presented on this record. A Federal court in Georgia, of limited jurisdiction, seizes lands in Alabama in a suit *in rem*, the power over the land being the indispensable fact in a suit for foreclosure of a deed of trust on the land, and proceeds to take possession of it and to sell and convey it, through the officer of the court, and to confirm the sale, and to pay the lawyers' fees and costs out of the fund derived from the sale of the land and from its rental, against the objection of the grantor and of one of the

two surviving trustees in the deed of trust. No reason or excuse is given for this extraterritorial range of judicial power. It is not found in the diverse citizenship of the parties to the suit. It is simply exerted out of hand and without excuse or apology.

53. If a writ of assistance had been required to put the purchaser at that sale in possession, the marshal of the court and his assistants would have been intruders if not invaders of Alabama, and would, doubtless, have been resisted by the executive of the State or forbidden by a State court from a course that was illegal, and in which the Federal court in Georgia could not have protected him.

54. These are facts appearing of record in this case, and the appellants are seeking the protection of the laws and Constitution of the United States, through the Supreme Court, to remedy a situation that is dangerous to the public order and peace as well as destructive to their property rights.

55. It is a case that involves the construction and application of the Constitution of the United States, in which also the jurisdiction of the circuit court is in issue.

It is brought before the Supreme Court on an appeal, duly allowed, which is unrestricted in form and substance, and on this point the decision in *Chappell vs. The United States*, 160 U. S., 509, is a clear authority. The grounds on which this appeal rests are the same as in the case cited, the only difference being that in this case the construction and application of the Constitution is "involved," and in the

case cited the constitutionality of a law of the United States "was drawn in question."

56. It will also appear, as a complete record in this case will establish, that the equity of redemption of this property was sold by a court of competent jurisdiction of Troup county, Georgia, subject to the deed of trust which is the foundation in this suit, by a receiver of that court, and that in its decree said court retained in the hands of its receiver a lien upon the property and its proceeds for the purpose of paying the interest on these bonds in suit in this case, and in its decree directed the receiver to pay the interest on said bonds in order to prevent any default in the payment thereof, and that J. J. Robinson, trustee in said deed, was a party to said suit. This invasion of the decree of said court of Georgia also involves the construction and application of the Constitution and laws of the United States as they affect the jurisdiction and powers of said circuit court.

57. It is true that a petition of the appellants in this cause for the writ of certiorari to review the judgment of affirmance rendered therein by the circuit court of appeals was presented to the Supreme Court, and that petition was denied by the Supreme Court on the 30th day of October, 1899.

That petition was not supported by a full and complete record of the proceedings in this cause in the circuit court of the northern district of Georgia, upon which the case was heard and determined in said circuit court of appeals, but upon extracts from said record, which did not show the alleged decree *pro confesso* against William T. Huguley, a

defendant in said case; nor did said record contain any statement of the facts that prove the interference with the receiver of the superior court of Troup county, Georgia, as above stated, so that the merits of said case and the want of jurisdiction to render a decree therein were not fully stated in said petition.

After the denial of said petition the appellants took the appeal in said case, which is now pending in this case, which was allowed by the Honorable Don Pardee, one of the judges of said circuit court of appeals.

Appellants are not informed of the grounds upon which said petition was denied, but they insist, most respectfully, that they could not have been such as to decide that this appeal is barred or that it is not well taken.

Appellants further respectfully insist that, if it appears to the court now and on this appeal that a case is presented which calls into action the revisory power of the Supreme Court, which ought to be exerted to secure justice by certiorari, appeal, mandamus, or "otherwise," that there is nothing in the judiciary act of 1891 or in the rules or practice of the court that prevents the Supreme Court from now exercising its appellate and revisory powers in this case upon the appeal in this case.

58. Appellants respectfully insist that it clearly appears in this cause that a number of errors have occurred in the decrees of the circuit court that have greatly wronged each of them, and have seriously damaged the rights of the bondholders, who are not represented in this case, and William T. Huguley insists that no valid decree against him has at any time been taken in this cause.

He insists that he is still the trustee in the deed of trust, which is the foundation of this action; that he has never abandoned said trust, nor has he resigned it or his duties under it, as trustee; that he has never been removed from the said trust, and his title as trustee has never been divested out of him, and he has always been willing and ready to execute said trust according to the terms of the deed by which it was created, and which he accepted as a party to said deed of trust.

It nowhere appears in this suit, by any proofs therein, that said Huguley ever had an interest in the property involved in this suit, or any interest whatever that is or ever was adverse to the bondholders under said deed of trust. On the contrary, it has been both his interest and desire that the money due on said bonds should be paid. He is adversely interested to J. J. Robinson in his effort to usurp the control of the trust property under said trust deed, in which Robinson is the cotrustee with said Huguley, and it is his anxiety to preserve said trust estate that has caused him to labor to have justice done in this suit.

JOHN T. MORGAN,
Attorney for Appellants.

No. 94.

NOV 20 1901
JAMES H. McKENNEY,
Clerk.

Assignment of Errors.

Supreme Court of the United States.

OCTOBER TERM, 1901.

Filed Nov. 20, 1901.

No. 94.

THE HUGULEY MANUFACTURING COMPANY, THE ALABAMA AND GECRGIA MANUFACTURING COMPANY, AND WILLIAM T. HUGULEY, APPELLANTS,

vs.

THE GALETON COTTON MILLS, J. J. ROBINSON, TRUSTEE, AND L. LANIER.

ASSIGNMENT OF ERRORS BY THE APPELLANTS IN THIS CASE.

JOHN T. MORGAN,
Attorney for Appellants.

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ssignment of Errors by the Appellants in This Case.

The circuit court of appeals erred in entertaining an eal before any final decree had been rendered in this se in the circuit court.

ut its decree, affirming the interlocutory decrees of the uit court therein, brings the entire case before the Su- ne Court for determination on the appeal from said cir- court of appeals, which was allowed by Hon. Don dee, circuit judge.

2. On the face of the bill filed in said court and under the averments and statements therein, the circuit court of the northern district of Georgia had no right, power, or authority in law to render a decree granting the relief therein prayed.

Said bill contained no ground for relief in equity, and the circuit court erred in taking and retaining jurisdiction thereof and in failing to dismiss the same, of its own motion, for want of jurisdiction and for want of equity.

3. The circuit court erred in the form and substance of the decree rendered in this case on the 30th day of March, 1895, upon the facts and principles of law upon which said decree is founded, as follows:

a. The case was not at issue, the court not having made any decree *pro confesso* against William T. Huguley, a defendant therein, who had not entered an appearance. On the statements, averments, and prayer of the bill of complaint no valid decree *pro confesso* could have been rendered by the court against said Huguley, who had not filed any answer or plea in the case as a defendant therein; and the prayer of said bill and the facts stated in it, if taken for confessed, do not present a ground for relief which said court could grant.

b. Said decree was for a foreclosure as to some of the bonds secured by the deed of trust, the holders of which were represented by Robinson, the complainant in the suit, in his alleged right as trustee, for whom he had refused to receive the interest due on the bonds so held by him; and as to the holders of the remainder of said bonds whom Rob-

inson did not represent, and who had "accepted" payment of the interest on their bonds, the court refused to foreclose the deed of trust, thereby discriminating against them without cause in said decree.

c. That a like discrimination was made by said decree in the money judgment rendered therein in favor of the bondholders preferred therein, and in the right to pay the purchase price of the property ordered to be sold at the sale under said decree in the bonds of the Alabama and Georgia Manufacturing Company, which discriminations are contrary to law and are not justified by the pleadings or proofs in the case.

d. That in said decree a judgment for the amount of the mortgage debt left unpaid after the sale of the property, was rendered against W. T. Huguley, a trustee in the deed of trust, as one of the defendants in the suit, in favor of Robinson, the other trustee in the same deed, for which execution was required to issue.

e. And a like judgment was rendered against the Huguley Manufacturing Company, and execution was ordered to issue thereon, when the record nowhere shows that any sum was due to the complainant or the bondholders or to any other person from said Huguley or from said corporation, and no such sum is claimed in the bill or elsewhere in the record.

4. That said circuit court, without authority of law and contrary to the statutory and constitutional limits of its

jurisdiction and powers as a circuit court of the United States for the northern district of Georgia, decreed the sale of lands, situate in Alabama, it being stated in the bill filed in the case, and also in the said decree that said lands are so situated, and said court directed that such sale should be made by an officer of the court at public sale, to be had and conducted at a place in Harris county, in the State of Georgia, as to which decree and proceedings thereunder said circuit court had no power or jurisdiction in the premises.

5. That the record, proceedings, and proofs in this cause show that this suit and the proceedings under the same were instituted and conducted for the benefit of the holders of certain bonds, ninety in number, and of the value, on their face, of $45,000; that said bonds were controlled by L. Lanier, as their agent, and that the holders of the remainder of the bonds, forty in number, and of the face value of $20,000, were held and controlled by the holders thereof in their own right. This minority class of bondholders were not made parties to the suit, either as individuals or by bringing into the case any person of their class or any person whose interest or duty it was to represent them or to protect them. Every decree made in the case as between this minority class and the majority class of bondholders, who were represented by L. Lanier, was adverse to and injurious to the rights and interests of the minority bondholders.

The bill filed in this case made room for this situation by the uncertainty of its statements as to the ownership of the

bonds and their control by Robinson or other promoters of this litigation.

It was error upon the face of the record and upon the pleadings and evidence and in the decree of the court, all of which show the adverse interests of these minority bondholders, to proceed to any decree in said case until they were made parties defendant therein.

6. The evidence shows that this suit was brought by Robinson, trustee, without any necessity or excuse for legal intervention to protect the bondholders; that their investment was perfectly secure and had 13 years to run, at 8 per cent. interest, payable semi-annually, when it was attempted to be forced to maturity by this suit to gratify the cupidity of L. Lanier; that the powers of the trustees under the deed of trust were ample for the collection of interest on the coupons and for the security of the payment of the bonds at maturity, and that Robinson had no right or lawful excuse for attempting to force the principal debt to maturity by an alleged forfeiture 13 years in advance of its actual maturity, except that some of the bondholders *had requested him* to do so, and this he sets up in his bill as his excuse for the violation of his trust.

It was error to predicate a decree of foreclosure upon such allegations, and the proof does not establish any actual or legal default in the payment of interest on the bonds that, in a court of equity, would force the principal debt to maturity.

7. It was error to annul and forfeit the rights of the grantor in the trust deed and of William T. Huguley, the

cotrustee of Robinson, and to proceed, as if such rights had never existed, to seize the property and sell it. The evidence in the record shows that the interest on the debt had been fully paid up to January 1, 1891, as it fell due, or within the period of indulgence provided in the contract, set forth in the trust deed, and that the interest due on 40 of the 130 bonds was paid to the holders, who accepted the same, and was on deposit in a national bank in Atlanta, to pay the interest on the other 90 bonds before it fell due; that it was not the duty of the debtor to pay the interest on these bonds, except upon the presentation and demand of payment of the coupons. A delay in the mail that brought the remittance and the occurrence of a legal holiday prevented the tender of the money for one day, or possibly two days, and Lanier, to whom money was actually remitted to pay the interest that was due and payable on the 1st day of January, 1891, applied it, contrary to the directions of the debtor, to the interest coupons which, under the contract, were due on the 1st day of January, 1891, but were entitled to indulgence until the 1st of July, 1891. The proof shows that the complainant in this bill and L. Lanier, acting as agent of the majority of the bondholders, refused to accept the money for the payment of any interest on the bonds after the 1st of January, 1891, on the ground that the whole debt had become due, and on this state of facts, proven in the case, it was error to decree the foreclosure of the deed of trust, as was done in the decree of March 30, 1895.

8. Said L. Lanier was made a party to this suit on his petition to confirm a sale of the trust estate, made under

the decree of March 30, 1895, at which he was a purchaser for the bondholders, as he alleged. On his petition, afterwards filed in the cause, the property was freed of all incumbrances theretofore made a lien upon it by decree of the court, and his purchase was made subject to such liens. On the 15th of October, 1898, said liens were transferred to the alleged fund in court, which was the money for which the trust property was sold, less expense and the costs of the suit, and the property was conveyed, by order of the court, directly to said L. Lanier, and the liens upon it were charged to the bondholders.

a. It was error to make the change in the terms of the sale of the land after the decree of March 30, 1895, was affirmed in the circuit court of appeals, and after subsequent decrees set out in the record were also affirmed.

b. It was error to transfer the liens fixed upon the property by the previous decrees of the court, after the sale had been made subject to such liens, and fix them upon the fund in court upon which the bondholders had the prior and paramount lien.

9. L. Lanier was largely interested in, if not the exclusive owner of, the bonds that he professed to manage for others in this suit, and in virtue of such control he acquired the entire trust estate in his own name as owner, and the effect of those decrees and the expenses of this litigation reduced the value of the bonds of other holders at least 30 per cent., as the proof shows. It was error to render such orders and decrees in his behalf, which directly concerned all the bond-

holders, without giving them any notice thereof, and to proceed therein on his petitions and motions, as the same appear of record in the cause, without making the bondholders or any of them or any representative of the minority bondholders defendants in the same. The evidence shows that L. Lanier set out, in getting up this suit and in conducting it, to capture the property in the trust deed, having Kirby and Dallis as coadjutors, and he succeeded by inflicting gross wrong on the bondholders and the defendants in the original bill.

10. It was error to change the terms of the sale of the trust estate from a sale payable in bonds, which was made and confirmed in May, 1896, to a payment in cash in October, 1898, and to make the title relate back to the date of the sale in May, 1896. That purchase was expressly made on account of the bondholders, and it was converted more than two years later into a sale for cash for the sole benefit of L. Lanier. The decree conveyed the title by relation to Lanier as of the date of May 5, 1896, and thereby relieved him from liability to the bondholders for rents for nearly three years.

It was error to permit L. Lanier, who was admitted as a party to the suit as trustee or agent for the majority of the bondholders, to litigate for his personal benefit, at their expense and to their disadvantage and to the disadvantage of the other bondholders who were not represented in the suit, and also to borrow money from the West Point Manufacturing Company, of which he was president and principal owner, at 1 per cent. per month, to pay $16,000, of which

$10,000 was applied to his bid for the property at the sale under the decree of March 30, 1895; and it was error to permit the Galeton Cotton Mills, a dummy corporation in Alabama, created by Lanier for the purpose, to receive a deed from him for the property sold under said decree, and to account for the net proceeds, as a mortgagee in possession, for the period during which he was held to account for the use of the property. For nearly three years of the period of his possession he was permitted by the decrees of the court to hold the possession as owner without any accounting for the use of the property. And this was error.

The possession of the property sold by the decree of the court in 1892, that was afterwards reversed, was held by the Galeton Cotton Mills, an Alabama corporation which was created for that purpose. If the majority of bondholders were in any sense mortgagees, they were not in possession of the property after the sale by decree of the court, but this foreign corporation was in possession for the benefit of Lanier, and resisted an accounting, thereby loading the bondholders with heavy costs and extraordinary charges in that litigation.

11. Appellants assign for error, on this record, the same errors that were assigned in the circuit court of appeals and are printed in the transcript certified on this appeal, on pages 79 to 95, including folios 93 to 111, and part of folio 112, and they pray that the court will consider the same, without requiring the same to be again printed in a separate document.

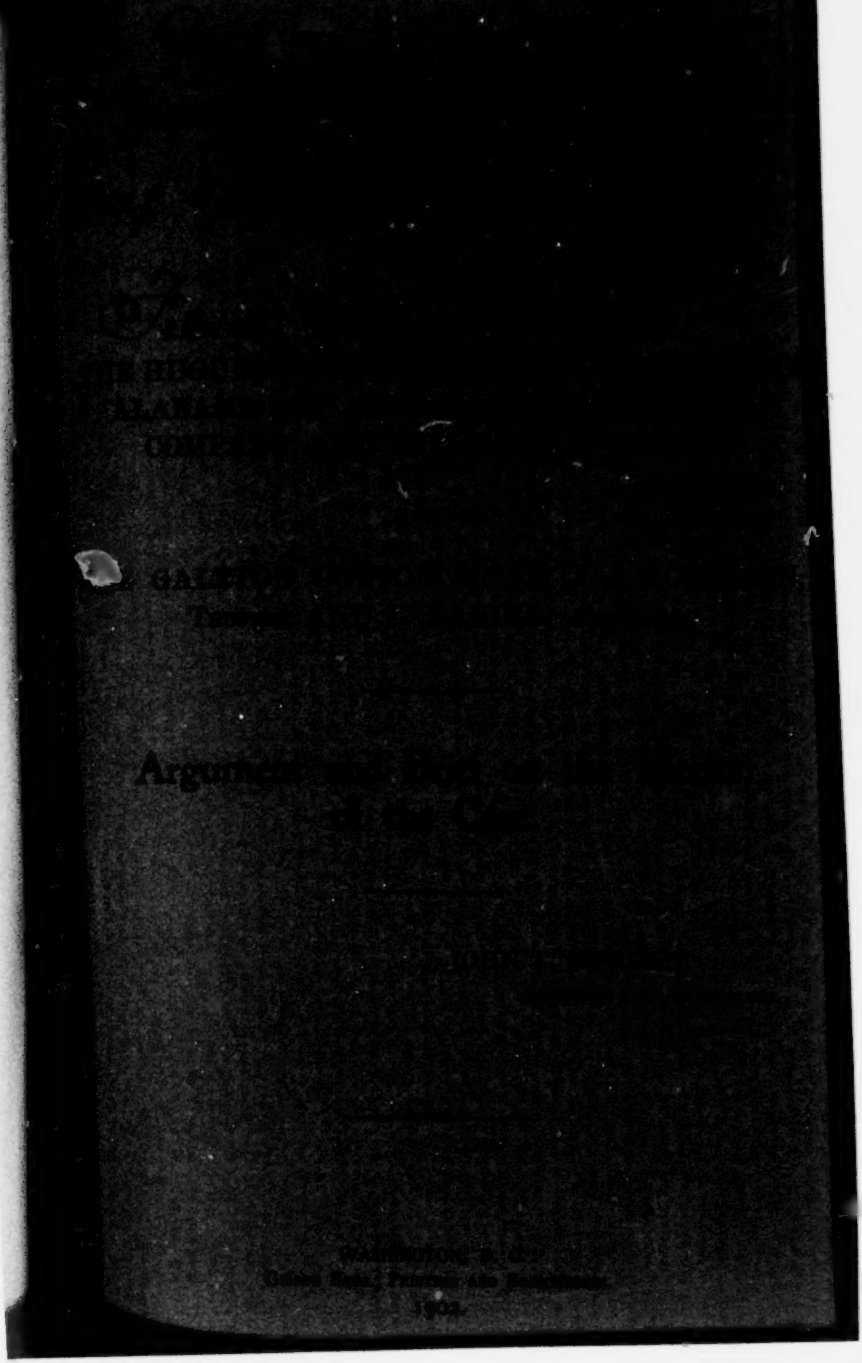
12. And appellants pray that this honorable court will cause the bill filed in this case to be dismissed, without

prejudice to any suit that shall be lawfully instituted by the holders of the bonds issued under the deed of trust which is the foundation of this suit, or in their behalf, by said trustees, or to any proceeding by said trustees or either of them to execute the powers under said trust deed according to the terms thereof.

And that, if this honorable court shall sustain the jurisdiction of the circuit court of the northern district of Georgia in this case, and the equity of this bill, that it will reverse and remand the case to the circuit court, because it is not at issue as to William T. Huguley, and that the court will require the plaintiff Robinson so to amend his bill as to show which of the bondholders he represented at the time this bill was filed, and their places of residence, and that the other bondholders, if they are residents of Georgia, be made parties to this suit.

13. And said William T. Huguley also separately assigns for error all the matters above stated as being erroneous and extrajudicial, and that all the decrees and proceedings had in this cause in the circuit court of the northern district of Georgia prior to the 12th day of November, 1898, and subsequent to the entry of default against him, are, as to him, erroneous, because said court was without jurisdiction to make said decrees against him.

JOHN T. MORGAN,
Attorney for Appellants.



Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 94.

THE HUGULEY MANUFACTURING COMPANY, THE ALABAMA AND GEORGIA MANUFACTURING COMPANY, AND WILLIAM T. HUGULEY, *Appellants*,

versus

THE GALETON COTTON MILLS, J. J. ROBINSON, TRUSTEE, AND L. LANIER, *Appellees*.

ARGUMENT AND BRIEF ON THE MERITS OF THE CASE.

JOHN T. MORGAN,
Attorney for Appellants.

1. The question of the jurisdiction of the Supreme Court to entertain the appeal in this case has been so much discussed in the former briefs, on the motion to dismiss and on the motion for *certiorari*, which has been granted and return to it made, that a further discussion is deemed unnecessary, except upon a single point.

The denial of the *certiorari* applied for in this case at the October Term, 1890, of the Supreme Court for the review of the entire case, was probably on the ground that the petition was based upon certain "extracts" from the record in the Circuit Court of Appeals, as is expressly stated in said petition, and not upon the entire record of the case in that court, and the denial of the prayer of that petition was not a judgment of the Supreme Court that the judgment of the Circuit Court of Appeals was final and conclusive in the case.

If the denial of the prayer of the petition was considered by the Supreme Court as being final, as a bar to any relief in the cause, in any form, it is not probable that the court would have ordered a *certiorari* to bring up a complete record in the case on this appeal.

Indeed, full and adequate effect cannot be given to the jurisdiction of the Supreme Court, in the review of causes and proceedings in the inferior courts, as it is regulated in the new judiciary act of March 3, 1891, if its powers are fettered by the form of the writ or petition employed in bringing the case or the question before the court. It is difficult to conceive of a supreme revisory jurisdiction, not controlled by some constitutional enactment, that is barred, by denying relief in one form of proceeding when it has power, in another form, to do justice according to law.

Such denial of a hearing of the case on petition for *certiorari*, which is a discretionary writ, is not, necessarily, an affirmance of the judgment sought to be reversed, and no mandate of affirmance issues in consequence of such denial. An appeal duly allowed, according to the statute, brings the record into the Supreme Court, and the question is not whether the case shall be heard, but whether, being heard, it shall be dismissed, or reversed, or affirmed.

2. In every respect Huguley's relation to the property in this suit united his personal interests with his duties as trustee, and both were in perfect harmony on the statement of facts in the bill. The averment that "he is interested adversely to your orator as the trustee of said bondholders," is not the statement of any fact that gives a cause of action, and presents no definite issue of fact. His failure to keep down the interest on the debt would lose him the possession of the property and all profit he could earn, during the period of the loan, and would deprive the Huguley Manufacturing Company, in which he was interested, of all chance to earn from the working of the cotton mills the $69,000.00 in money, and a much larger sum in judgment, they paid for this right, and the prospect of ultimate ownership of the property. Having the duty resting on him, as trustee, of providing for the continuance of the investment, for the benefit of the bondholders, he could have done no act more in keeping with that duty than to purchase the possessory rights of the mortgagor at the sale under the decree in chancery of the Georgia court.

3. J. J. Robinson is described in the bill exhibited in this case as a trustee, under a deed of trust, a copy of which is attached to the bill and is made part of it. He does not seek the advice or assistance of the court in the execution of the trust in this suit, but he abandons the duties and obligations imposed upon him by his acceptance of the trust, and prays for a receiver to take possession of

the property and sell it, thirteen years in advance of the maturity of the debt secured by the deed.

If the alleged forfeiture of the contract date of the payment, or of the maturity of the debt had occurred before the bill was filed, it was also the contract right and the duty of the trustees to sell the trust property, or so much of it as would pay the debt, or such part of it as was due and unpaid, according to the terms of the agreement. He abandoned his rightful powers and duties and went into court to foreclose the deed of trust and sell the entire trust estate through officers to be appointed by the court. There was no legal right or necessity for such a proceeding. It was a proceeding in real hostility to the trust. If a receiver, for which he prayed had been appointed, that moment every legal and equitable claim or title to the property vested in Robinson by the deed would have enured to the receiver, and he would have lost all right to a decree in the cause of any sort in his favor as trustee, and all right to conduct the litigation or to dismiss his suit. It was only because he declined to press for the appointment of a receiver that he retained even the semblance of the right to ask for any decree in the cause.

He represented the bondholders and the grantor in the trust deed only in the capacity of a naked trustee and only in virtue of the powers conferred upon him in the trust deed. His relation to both was fiduciary and was limited to the terms and purposes of the trust, and he had no right to elect that either or any of the parties actually interested in the trust estate should go into court to have rights settled in contravention of the deed, or in accordance with it, so long as his powers as trustee remained and were not controverted, opposed or interrupted by anybody. He had no personal or official ground of complaint when he filed his bill, and was an intruder upon the rights of the bondholders he assumed to represent, and upon others.

4. The pretexts offered in the bill for causing unnecessary wasteful, vastly excessive and harassing litigation, and for placing this property under the hammer, that Lanier might buy it with the bonds he had gathered into a syndicate, formed in considerable part of women and children for whom he was acting, were, as stated in the bill, 1st, that Yancey, one of the three trustees, was dead; yet the deed gave the title and all the trust powers to the survivors in that case. 2d, that W. T. Huguley, the other trustee, "*is interested adversely to your orator as trustee of said bondholders.*"

The only facts stated in the bill to show such adverse interest

are, "that under and by virtue of a decree in chancery issuing out of the Superior Court of Troup county, Georgia, at term, 1888, all the property of said Alabama and Georgia Manufacturing Company covered by said deed of trust was sold by the sheriff of Harris County, Georgia, on the first Tuesday in January, 1890, and purchased by certain persons who afterwards, as orator is informed, conveyed or otherwise disposed of the same to the said Huguley Manufacturing Company, defendant herein. And said last mentioned corporation is now in the possession of the same, claiming said property *under said sale. Said sale was made subject in all respects to the rights and lien of your orator as trustee for the holders of said first mortgage bonds.* Said W. T. Huguley, defendant herein, and named as one of the trustees for said bondholders, *claimed at the time of said sale to be interested in the purchase of said property, and now claims to be interested in the property and assets of said Huguley Manufacturing Company.*" The trust deed on its face shows that it was executed by W. T. Huguley, as Vice-President and Secretary of the grantor in the deed, and Robinson, as trustee, accepted the deed which disclosed Huguley's interest. Whatever interest he acquired at the sale under the decree mentioned in the bill only added another trust, created by law, to the express trust in the deed.

It is not stated in the bill whether this judicial sale was made under liens that were older or younger than the deed of trust appended to the bill, but it is stated that "*said sale was made subject in all respects to the rights and lien of*" Robinson, "*as trustee for the holders of said first mortgage bonds.*"

This is all that relates to any conflict or antagonism of interests between Huguley's rights, so acquired, whatever they were, and any right of Robinson, as trustee, or of the bondholders, under the deed of trust. No act or statement of Huguley, beyond what is above stated, is referred to in the bill to sustain the allegation that "*he is interested adversely to your orator as the trustee of said bondholders.*"

And there is no such act or statement in the proof, or in any part of this entire record; but there is abundant proof in this record that Robinson, as the tool of Lanier, was used for the purpose of antagonizing the interests and rights of the bondholders, and of capturing this trust estate, which Robinson claimed the exclusive right to administer and control as trustee.

On the statements in the bill, and aside from the proofs which demonstrate Huguley's fidelity to the trust, Huguley did not place

himself in opposition to, or in any adverse relation towards, the bondholders, or his co-trustee, or the grantor in the deed of trust, by acquiring an interest in the mortgaged property, or a possession, or right of possession thereof, or the equity of redemption therein, if that was what was sold. A right of possession and usufruct were sold, subject, in all respects, to this deed of trust.

As trustee, Huguley had the right to buy the property at a sale made under another mortgage or lien of any sort, by judicial decree, subject to the mortgage in which he was trustee, and his purchase enured to the benefit of the mortgage estate by operation of law. Such purchase protected the lien and rights conveyed to the trustees under the deed appended to the bill, and preserved the property then subject to a debt, the maturity of which was postponed for more than thirteen years. It was a beneficent and loyal act, entirely consistent with the trust, and it united the possession of the trustee with the title to the property, when the legal title of the mortgagor had been foreclosed by the Georgia decree and had ceased; having been sold under the decree of a court of competent jurisdiction.

After that purchase, Huguley held the right of property and possession of the mortgagor, subject to the deed of trust, and never otherwise. The investment was safe, the property being of the value four times the amount of the debt, and having twenty years to run, with negotiable interest coupons payable each six months at eight per cent. per annum. The bondholders were greatly interested in the continuance, as well as the security for the loan, and the deed carefully provides for the operation of the mills as a continuing business. Huguley's interest in the property was to pay off the mortgage debt and interest as it accured, and, to this end, as well as to preserve the property in repair and to increase its value, he was doing exactly what the deed required of him as trustee, in the operation of the mills and in their preservation, had he and his co-trustees taken possession under the deed of trust, in case of default in the payment of the interest, or in case of a failure to keep the property insured, or in case of any damage to the property.

It is too severe a tax, even on the imagination, to ascertain how such a purchase could be in hostility to the trust or to any right or interest of Robinson as trustee, or to anybody interested in the deed of trust.

On this pivotal point the suit fails, for the non-joinder of Huguley as a complainant, the right of action and the right to decide whether a suit was necessary being equally his right with that of his co-trustee.

5. There was nothing in Huguley's attitude, at any time, that was adverse to Robinson as trustee; but if there was, that situation furnished no ground to support a bill for the sudden foreclosure and sale of the property, at the suit of Robinson, or under the great expense of a law suit. His remedy, if he had any reason for going into court, was to ask a proper court of equity, on a proper bill, to permit him to execute the power of sale in the deed of trust, one co-trustee being dead and the other refusing to sell the property, and to ask the court to direct him and aid him in accounting with the bondholders and other claimants, including his surviving co-trustee.

This bill has no such aspect, and no such decree could be predicated on its statements, averments, or prayer.

6. It is a bill for a foreclosure and sale under a deed of trust, exhibited by a trustee who is not a bondholder or creditor in his character as trustee, and upon an alleged forfeiture which, if it existed, authorized him, as trustee, to sell the property and pay the mortgage debt to the extent that it was due, without the intervention of any judicial tribunal, provided, always, that his co-trustee upon request made, or in some way had refused to join him in selling the property to pay the interest due on the debt.

It is the case of a plain, adequate and complete remedy by contract under the law, which was not controverted or opposed by anybody.

The facts stated in the bill show that the jurisdiction of a court of equity to grant the relief prayed is even more complete than if the remedy could only be by some action of the court, and the remedy at law was plain, adequate, and complete.

No intervention of any court was necessary in this case, and this is one of the great wrongs and hardships that have been imposed upon everybody connected with it except Lanier, and has caused a gross imposition on the Circuit Court of the United States, by the fabrication of a complaint, for which no just ground existed, in favor of Robinson, who was a citizen of Alabama, and against Huguley and others, citizens of Georgia, who are innocent of any wrongdoing, in order to give that court an apparent basis of jurisdiction.

7. If, however, a suit in equity could be sustained by Robinson, as trustee, on the facts stated in the bill, if properly pleaded and on a proper prayer, as to any or all of the defendants, or for any purpose of the bill, or for the enforcement of the trust in any form,

it is shown on the face of the bill and the exhibit thereto that neither Robinson nor any bondholder has done the things required by the trust deed and the bonds and coupons secured by it, that entitle him or any bondholder to maintain the suit. Nor has any defendant in the suit done or omitted to do anything so required, that made them liable to be sued, at the time the bill was filed, for the entire debt secured by the mortgage, or for any interest not due until after the bill was filed.

This transaction was intended to cover the full period of twenty years for the two leading objects of securing the extension of existing debts due from a manufacturing company, and, in part, a loan with which to repair and improve the property, and careful provision was made in the deed to keep the mills in successful operation.

The deed of trust which embodied the whole plan of this arrangement was made by a prosperous company that owned a splendid property but owed debts that were not pressing for payment—the creditors being the stockholders. The deed recites that the company owed some notes and that the creditors of the company—the principal ones being named—"have signified their willingness to accept in lieu of their present notes against the company first mortgage bonds of the company."

Bonds on a security worth three times the debt were issued to the amount of $65,000 under that agreement, to fall due on the first day of January, 1904, "with interest coupons attached, payable semi-annually on the first day of January and July of each year for $20.00 each"; the bonds being in the sum of $500.00 each, which was a rate of 8 per cent. per annum, compounded every six months, with the privilege to the debtor *to call in and pay the bonds and the coupons then due, after five years from the date of issue.* This was a simple refunding of an existing debt, and was advantageous to all concerned.

This privilege of calling in and paying the bonds and interest after five years from the date of the deed, is not dependent on the full and prompt payment of the interest due on the coupons during that period of five years. It is a right of redemption of the property at the end of five years, by the mortgagor, which is dependent on no condition whatever except the payment of the full amount of the debt and interest due when the right is asserted. It is of the same nature as the right of redemption secured to debtors whose property has been sold under execution in many of the States, which can be waived by agreement, but cannot be destroyed by the judgment of a court in advance of a sale of the property.

A decree of foreclosure of this deed, made March 30, 1895, on a bill filed January 20, 1891, which allowed thirty days in which to pay the debt, destroyed this contract.

If equitable grounds in fact existed for a foreclosure and sale, the title could not pass to the purchaser freed from this right of redemption.

That right was not forfeited, as between the parties interested in this deed of trust, by a default in paying the interest on the debt before the lapse of five years from the date of the deed.

8. The title to the factory property, consisting of lands and water power, by far the larger and most valuable part of which was in Alabama, was conveyed to three trustees, "in trust for the uses and purposes herein set forth." The deed was filed in the office of the Judge of Probate, of Chambers county, Alabama, on the 21st day of January, 1884, and recorded on the 24th day of January, 1884; the said J. J. Robinson, the trustee and complainant, being the judge of said Probate Court. Robinson had full notice of every fact in his case, when his bill was filed, and stated, literally, but not in connection with the true history of the transaction, only such facts as would make a *prima facie* case on the question of jurisdiction because of the diverse citizenship of the parties, and omitted any statement of the facts *required in the deed of trust* as to the basis of his right to claim that the non-payment of interest would force the entire principal debt to maturity.

No bond or coupon is copied in any part of the evidence, and the only proof of their terms is the recital of the deed of trust, and a statement of a part of the terms of the bonds, which corresponds with the recitals of the mortgage, as stated in the opinion of Judge Newman, delivered March 23, 1892.

Record, Part 1, p. 165.

9. In the bill it is stated that "orator has been notified since the expiration of the six months after the said July coupons fell due, by a majority of said bondholders, in amount, of *their election*, to treat the whole of said principal sum named in the bonds as due under the provisions of said bonds." The only other statements in the bill as to default in the payment of interest, at any time, is as follows: "The said Alabama and Georgia Manufacturing Company has failed to pay the interest on said bonds, *or a large majority of those falling due on July* 1, 1890, and has failed to pay any of the interest coupons falling due January 1, 1891, and more than six

months has elapsed *since the said July coupons fell due*, and they still remain unpaid."

This was on the 21st day of January, 1891, wanting more than five months until the January coupons would fall due.

And further, "no money was *on deposit* at the place of payment at the time said July coupons fell due, and none *deposited* within six months thereafter at the place of payment to pay the same, and all or *nearly all* of said July coupons remain unpaid, as orator is informed by the holders thereof."

It was impossible to pay these coupons and the costs, and stop this suit, as well because no amount is stated as for the reason that the names of the holders of the coupons are not stated.

With the exception of the following statement in the bill, *this is the entire case, as to any default in the payment of interest*, and as to the bonds or the holders or owners of the bonds, or the amount due on them, that furnished the basis of the "election to treat the whole principal sum named in the bonds as due under the provisions of said bonds," and also of Robinson's resolve "to begin proceedings to secure the property pledged for the payment of said indebtedness, and *he deems it to the best interest of the bondholders of said bonds that he should do so.*"

The innocence of his rights and duties, as trustee, under this deed, and of the right of an alleged majority in amount of the holders of the bonds, to elect that the principal sum of all the bonds should be considered as having fallen due, is only equalled by the ignorance of the fact that a minority of the trustees under this deed cannot determine the rights of the bondholders, who have waived the alleged default, and force them into a litigation, and the loss of a valuable investment, because Robinson "deems it to their best interest * * * that he should do so," and assumes to be their guardian *ad hoc.*

10. The deed provides that the three trustees, "or a *majority* of them," shall proceed to sell the mortgaged property at auction—*for "cash, or a sufficient amount of the same to pay the amount due.*"

"Should default be made in the payment of said bonds or of the interest on said bonds as it shall [(approve?) accrue, then, immediately on such default being made known by the holder or holders of said bonds or holder or holders of the coupons *attached* thereto, and if, *after notice is served upon the president of said company*, the same shall remain unpaid for six months after such default shall

have been made in the payment of the said interest or principal, as the case may be, and at the request of one or more of *the holders of such bonds* or coupons, and without any other authority from said Alabama and Georgia Manufacturing Company, upon giving sixty days' notice of the time and place of sale by publication," etc., the trustees shall proceed to sell, etc., as above stated.

11. It seems to require no argument to show that the power of the trustees under this deed to proceed to sell the trust estate, or of a court of equity to "foreclose" this deed, cannot be exercised, lawfully, or without violating the contract, without any notice having been given to the president of the company of default in the payment of interest coupons on the bonds issued under it, and that the holder of a single coupon cannot, by his mere election, put $65,000 of bonds, held by himself or another, into legal maturity, at a date fourteen years in advance of their maturity, according to the face of the contract.

This was, evidently, not the meaning of this contract, and to attribute to it such a meaning is simply to violate it.

12. The deed of trust provides that the bonds issued under it shall "bear eight per cent. per annum, with interest coupons attached, payable semi-annually; principal and interest payable at the office of the company in West Point, Georgia;" *but the default* that would empower the trustees to sell the trust estate, or justify a court in foreclosing the deed and selling the property for the principal of the entire mortgage debt, is defined in the contract, as it is set forth in the above-quoted extracts from the deed of trust. Such default is not the failure to pay the coupons when due, but *after demand at the place of payment and notice of non-payment served on the president of the company, and the delay or refusal of payment for six months after such notice.*

The illustration that is directly in point, and is conclusive to show the necessity of this check upon a bondholder or a coupon holder, or a combination of such, to wreck the company by forcing its property to sale and acquiring it by fraudulent artifice, is presented in the facts of this case.

This bill does not state that the president of this company was notified of any failure in the payment of any interest coupon, or that there was no president of the company on or after July 1, 1890, or January 1, 1891. It only states that no money was deposited *at the place of payment* at the time said July coupons fell due, and

none deposited within six months thereafter at the place of payment to pay the same.

Yet the record shows that Robinson was a stockholder and a director, and L. Lanier was both a stockholder and director in the Alabama and Georgia Manufacturing Company at the said dates of July 1, 1890, and January 1, 1891.

13. Robinson, as trustee and as director of the company that executed the deed of trust to him, was bound in conscience and in law to protect the trust estate, instead of yielding to Lanier's demand to put it under the hammer so that he (Lanier) might buy in the property, worth over $200,000.00, with bonds held by a syndicate of bondholders.

And Lanier, as a stockholder and director of the debtor company, could not lawfully or justly spring such an ambuscade on the company to which he owed obligations of duty.

14. It is alleged that the company "is insolvent, and has ceased to do business, and has ceased to keep an office in West Point or elsewhere for the transaction of business."

Yet the proof shows that it did have an office and it had a president and board of directors, of whom Lanier was one and Robinson another, and it had paid the interest on this mortgage, which held priority under the decree of a competent court over all other debts; and this trust estate was held by the Georgia Chancery Court, *in gremio legis*, in the hands of a receiver, after the sale to the Huguley Manufacturing Company, for the sole purpose of paying the interest on the debt. This receiver had never been discharged, nor had the order of that court ever been revoked. In the time of his receivership he paid the interest on this debt, both before and after the sale to the Huguley Manufacturing Company, as the coupons fell due, to all the bondholders, including L. Lanier, and through said Lanier's firm, as his agents, until said company took up the payment of said interest.

15. The Huguley Manufacturing Company, for the protection of their own possessory rights in the property, made provision for the payment of the interest on the bonds, which, by an alleged delay in the mails and the intervention of a legal holiday, did not reach the counter of the bank in Atlanta until one day after the first day of January, 1891, although the mail that contained the remittance reached the bank, or, according to the evidence, should have reached the bank before the first day of January, 1891. Within this brief space of

time, Lanier then thought he had found his opportunity to set up a forfeiture, or penalty, that would mature the entire debt, even as to those who received their interest and refused to join him in this unconscionable maraud.

Coming into a court of equity, in mask, behind the name of Robinson, trustee, he asks for a forfeiture and penalty that has cost innocent people a great sum of money, and has ruined some of them beyond remedy. If every legal technicality favored him a court of equity would still close its doors upon him for conscience sake.

The discussion of this pivotal point, on the merits of this case, so far as Lanier is concerned, was so truly and fully presented in this case, in the Circuit Court of Appeals, by Hon. Robert C. Brickell, former Chief-Justice of Alabama, that his argument and brief are now presented to the Court by the attorney for the appellants, as follows :

NITED STATES CIRCUIT COURT OF APPEALS

FOR THE FIFTH CIRCUIT, AT NEW ORLEANS, LA.

No. 97.

HE ALABAMA AND GEORGIA MANUFACTURING COMPANY ET ALS.,

Appellants,

versus

J. J. ROBINSON, TRUSTEE, ET ALS.,

Appellees.

Argument for Appellants by Brickell, Semple & Gunter.

FACTS.

The Alabama and Georgia Manufacturing Company issued bonds the amount of $65,000. In the mortgage to secure the same it provided that the trustees shall be authorized, "should default be de in the payment of said bonds when they fall due, or in the yment of the interest on said bonds as it shall accrue, then im-diately on such default being made known by the holder or hold-s of said bonds, or holder or holders of the coupons attached ereto, and if after notice is served on the president of d company the same shall remain unpaid for six months er such default shall have been made in the payment of the d interest or principal, as the case may be, and at the request any one or more of the holders of said bonds or coupons * * upon giving sixty days' notice of the time and place of e * * * to proceed to sell at public auction * * * for sh the property herein conveyed * * * and apply the pro-eds of sale, first, to the expense of sale, second to the payment d liquidation of all the bonds and interest due on the same * * and the said Alabama and Georgia Manufacturing Com-ny hereby reserves to itself the quiet and peaceable possession of of said property herein contained * * * until after default herein provided." (Tr. 7–8.)

In each of the bonds there is this other provision :

"And it is hereby expressly agreed by the said company with each and any holder of this bond that in case of non-payment of any interest coupon hereto attached, if such default shall continue for six months after maturity and demand of payment, the principal of *this bond* shall become immediately due and collectible." (Tr. 2.)

The bonds are not yet due, but it is insisted that such a default is charged and proved in the case as to make them due, and the court decreed that they were due by forfeiture, and that the trustee "have and recover" the whole amount of the bonds, and that if the same was not paid in thirty days that the property be sold, and it was sold under this order and bought by the bondholders. (Tr. 159–160.)

This appeal is to reverse that decree and to have the sale vacated and to have the bill dismissed.

ARGUMENT.

The case of Chicago, etc., *v.* Fosdick, 106 U. S. 47, contains an express decision on almost every vital point in the case at bar, showing that the decree is incurably wrong and that the bill should be dismissed.

Parties have a right to make contracts as they please, so long as they are lawful, and courts cannot vary their terms and can only enforce legal remedies for defaults shown therein.

In this case the mortgage contains a provision under and by which the bonds not due on their face might become due by forfeiture. We have recited above that condition. It is a condition and a power combined—the default therein provided for must exist, and when that exists there is a power in "any one or more of the holders of said bonds or coupons" to request a foreclosure of the mortgage for the whole debt. (Tr. 7.)

The condition is that "default be made in the payment of said bonds * * * or in the payment of interest," * * * and that the interest or bond "shall remain unpaid for six months," "*after notice is served on the president of said company.*" The default must be made known "by the holder or holders" of the bonds or coupons, and notice must be "*served upon the president,*" and *six months must elapse after such service of notice.* (Tr. 7.)

The bill does not pretend that this condition was ever complied with, nor does it show that it could not have been complied with.

There was a president of the company upon whom service of notice could, at any time, have been had.

To any one familiar with the rules of law, or even of common business principles, it would seem superfluous to argue the point that no one should have any right to alter the terms *of the conditions* of a contract, settled between the parties, upon which one is subjected to a forfeiture and penalty; that is, to alter or dispense with the expressed conditions upon which a large debt, not due according to its terms, shall suddenly become due and payable and be enforced to the ruin of a debtor.

If such a power was lodged in any tribunal it would be the means of incalculable mischief, since it would be no less than allowing third parties to make contracts for other people.

There is no case which even hints at any such right or power being in or claimed by any court.

The right to foreclose by sale under a power, or by proceedings in court, must, of course, be perfect before it can be exercised, and if the right is clogged by a condition there is no such thing known in jurisprudence as dispensing with the condition. All this is amply shown in the case above referred to in 106 U. S. 47, *et seq.* See also Jones on Corp. Bonds, and M., Secs. 381–2–3–4–5.

In that case there was default in paying the interest on part of the bonds, and so there may have been (we will admit at present, for the sake of argument) here an omission to pay interest on part of the bonds. In that case there was a waiver of the particular default as to part of the bonds, and here there was a waiver, since part of the bondholders received in January, 1891, their interest due in July, 1890. There the court said the conditions to create a forfeiture against the debtor, by making bonds due from non-payment of interest after demand, etc., were necessary to be strictly complied with, and had not been complied with. And, consequently, it was held that the decree of the court *requiring the debtor to pay more than the amount of the debt actually due, as a condition to avoid the sale, was an incurable error in the decree, necessitating the vacation of the sale.*

So here there is no pretence even of compliance with the condition in the mortgage by which the whole debt might be collected, and it is evident that here, as there, some of the bondholders waived their rights, so far as they were individual, by taking the interest Yet the court here, as in the lower court in that case, required the payment of *the whole issue of the bonds as a condition of avoiding the sale.*

The court in that case say that such a decree is an illegal "exaction" from the debtor, and that the only correction possible is the vacation of the sale and restoration of the property to the debtor.

In opposition to this view it is said that the debtor was insolvent, and that the law does not require a vain and useless thing, and therefore does not require a demand to be made of an insolvent person. And the case of Shaw *v.* Bill, 95 U. S. 10, is cited in support of the proposition. The reply to this is, that the case cited is not one in which the demand was a part of a *condition* to create a forfeiture, but was on the point whether a demand was necessary to be made of an insolvent before the institution of suit to recover an amount actually due. In such a case a demand is dispensed with, and suit can be instituted at once for what is actually due. And here, there could be no objection to suit for the recovery of any amount actually due. But no case holds that a "default" to work a forfeiture—that is, to make debts due prior to maturity according to their face—and which is *conditioned* on a "demand" or notice "served upon the president" and the lapse of a given time thereafter, or on any other event, single or combined, can be worked out in any other way than through the actual happening or performance of every term of the condition. No one ever before heard that insolvency of the debtor dispensed with the terms of a condition.

On the contrary, it is expressly said in the Fosdick case, 106 U. S., pp. 73–6, that the insolvency of the company can have nothing to do with "the question of an actual default," and cannot affect the legal or equitable rights of the company. And a moment's consideration will show the danger of allowing any change in the terms of a contract as made by the parties. It was well known to the parties who were endeavoring to bring about a default in these bonds, that "the president," who was to be "served with notice," was the person interested in avoiding the technical default. His company had bought the property subject to these bonds, and it was worth four times the amount of the bonds, being insured for $200,000.

And these same parties knew that if he was "served with notice," the default would hardly be allowed to occur. To allow them, then, to dispense with this requisite, which must be supposed to have been inserted out of abundant caution, and to avoid what is now claimed, would simply be making a new contract and at the same time enforcing it without notice of the change to the party contracting.

So it can make no difference on the question of a default as provided for in the mortgage whether the company was solvent or insol-

vent. If a demand and the service of a notice on a particular person must be made, as conditions to the right to collect bonds before maturity according to their face, the conditions must in all cases be performed before there is any forfeiture.

To take away a person's property for and upon a forfeiture, which is conditioned on events which have never happened, and that, too, when the very contract, out of abundant caution, expressly reserves the right of the use and possession "until after default as herein provided," savors of confiscation. And it was practically so characterized in the Fosdick case, *supra*.

See also Farmers' L. & T. Co. *v.* Chicago, etc., 27 Fed. Rep. 152.

But the company was not insolvent in the sense in which the pleader intended the court to understand him. So far as the bondholders were concerned, the purchasers of the property subject to their bonds were practically the old company; they succeeded to the right to pay the interest on the bonds and avoid the forfeiture, and they were interested in doing so, and had been accustomed to pay it—they were able to do it—they had, with the knowledge of the bondholders instituting this suit, over $200,000 worth of property under a first mortgage to pay $65,000 of bonds and the current interest.

To refer to the insolvency, if it be a fact, of the old company as a reason why the demand of interest and notice of non-payment would be, under the circumstances, a "vain and useless thing," and, therefore, to be excused as part of a condition precedent to a right claimed is, to say the least of it, utterly preposterous. The truth is the property was well known to be worth at least four times the bonds, and the omission to make the demand and serve the notice was not to save the trouble of doing "a vain and useless thing," but to avoid giving the alarm to an intended victim.

It is next said that there is in each of the bonds the clause above set out, "that in case of the non-payment of any interest coupon hereto attached, if such default shall continue for six months after maturity and demand of payment, the principal of this bond shall become immediately due and collectible," and it is insisted that there is a right under this to foreclose for the whole debt.

It will be observed that this agreement is "by the said company with each and any holder of this bond." And if there was a default as therein provided it would be at most like the one allowed in the case of Fosdick, in 106 U. S., *supra*; one giving the holder or holders of a bond, as to which default was made, a right to insist

upon that bond being paid, and if not paid in a given time to require the property, or a sufficient part thereof, to be sold for that purpose, and if indivisible that it be sold as an entirety.

See also Farmers' L. & T. Co. *v.* Chicago, etc., 27 Fed. Rep. 152–3.

But in such case the other bonds, as to which no default existed, or as to which the default had been waived, by taking in this case the interest, and in the Fosdick case by accepting consolidated bonds on which interest was paid, could not be required to be paid to avoid the sale of the property, but only the bonds as to which there was an actual default.

But here, as in the lower court in the Fosdick case, the defendant was required to pay the whole bonded debt to avoid a sale, whereas there was confessedly no default, or a waiver of the default, as to a considerable number of the bonds.

If there was any default as to any bond, making it presently due and collectible, the decree, in the language of the Fosdick case, was incurably erroneous in "exacting" from the defendant the payment of all the bonds as the condition of avoiding a sale, instead of the bonds as to which the actual default appertained.

And if there was any default as to any of the bonds, as last above mentioned, it gave an individual right to the bondholder as the owner of the particular bond so defaulted, and no bill could be filed by him or by the trustee to assert the right to collect such bond, without distinctly claiming the right as applying to the particular bonds, which would have to be individualized or identified in the pleading. A moment's consideration shows that this must be so. The suit is in such case one to collect particular bonds, on account of a matter appertaining to such bonds, which of necessity must be described.

Chicago, etc., *v.* Fosdick, 106 U. S. 68, 77, 78.
Wood *v.* Consolidated E. Co., 36 Fed. Rep. 538.
Farmers' L. & T. Co. *v.* Chicago, etc., 27 Fed. Rep, 152–3.
Jones on Corp. Bonds and Mortgages, Secs. 51, 389.

In such suit the court would have to ascertain the actual default and give a reasonable time to pay it to avoid a sale, and could only sell all the property and pay all the bonds from the necessity arising from the indivisibility of the property. And not, as in this case, *require, in the first instance*, the payment of all the bonds to avoid a sale. Such an order is an "incurable error" and an "illegal exaction," as it is styled in 106 U. S., *supra*.

It will be observed that the bill in this case is not filed with any view to enforcing the collection of any particular bond or bonds as an individual right of a particular bondholder; and it cannot be converted into any such bill. It is filed to collect all the bonds, on a condition of forfeiture applicable to all, or giving the trustee a right to proceed to collect all. Such condition of forfeiture is only found in the mortgage, and it must be enforced, if at all, on the terms of that instrument. And we have seen that no forfeiture can be claimed under the mortgage.

Jones on Corp. Bonds and Mortgages, Secs. 381-2-3-4-5.

We also insist that if the bill had been filed for that purpose, there has been no forfeiture as to any particular bond, making it "immediately due and collectible." It will be observed that, to make a bond due before its time, there must be non-payment of interest, and such default must "continue for six months after maturity and *demand* of payment." (Tr. 2.)

In the Fosdick case, in 106 U. S. 77, it is said that such a "stipulation is in the nature of a forfeiture," and is to be construed in favor of the debtor.

And all the authorities hold that such forfeitures will not be enforced in case of fraud, accident or mistake, or when the conduct of the creditor "*indicates artfulness, trickery or stratagem in bringing on the technical conditions upon which the claim is made.*"

Union Mutual L. Ins. Co. *v.* U. M. P. Co., 37 Fed. Rep.289-90.
2 Jones on Mortgages, Secs. 1179 and 1185.
Noyes *v.* Clarke, 7 Paige, 179.
Wilson *v.* Bird, 28 N. J. Eq. 352.

Now, the rule is universal that the bill must allege a default "within the terms of the mortgage," or instrument sued on. Jones on Corp. Bonds and M., Secs. 381-2-3-4.

In the bill in this case no demand whatever is alleged. But the real party in the case, Lanier, attempts to prove a demand. Was there any "artfulness, trickery, stratagem or fraud" in this matter of the claimed default?

He says he made demand of W. S. Jackson, the last treasurer, and Harrington Bros., the last elected agents and managers. (Tr. 61.) He says he made this demand on the 1st of July, 1890. If coupons have days of grace, this demand was before maturity, and therefore no demand.

But did he artfully demand from a party having no interest? He swears, as do others, that Huguley & Co. had a sign in their office

at West Point stating that that was the office of the Alabama and Georgia Manufacturing Company.

The question was "Did not said W. H. Huguley & Co. have on their store, or on their curtains of the store, a sign or signs that the office of the Alabama and Georgia Manufacturing Co. was there?" (Tr. 57.) The answer is, "Yes, on one of the curtains." (Tr. 64.) It is admitted that W. H. Huguley was president. (Tr. 145.) The bill states that the Huguley Manufacturing Co. had possession as purchasers of the property, and that W. T. Huguley was adversely interested against Robinson as trustee. The mortgage expressly provides that notice should be served on the president, and the coupon, that it was payable at the office of the company.

Now, why did not Mr. Lanier go to the place advertised as the office of the Alabama and Georgia Manufacturing Company to make his demand? And why did he not make it of the president, who he knew had an interest in the property and in paying the coupons? (Tr. 81.)

Simply because he wanted, by trickery, to get up a technical default and to precipitate the whole debt on the owners, and possess himself and associates of this rival and valuable property of his enemy.

Every one would understand, and Lanier well understood, that the advertised office of the company was the place to demand the payment of the coupons, if any was to be made to enforce a forfeiture, and that the president was the man to make the demand of. But he avoids the place and the man, for no other purpose in the world than, by artfulness, trickery and fraud, to bring on a technical default. He did not want his money. He says he would not have accepted it on the 2d of January. (Tr. 64.)

A demand had to be made of some one competent to answer for the company, or the predicate for the condition of forfeiture as to the bond could not be laid. The coupon would, of course, mature without demand and could be collected—*but a "demand" had to be made or there would be no forfeiture.*

Lanier made his demand of persons having no interest, and who could not answer for the company, when he had notice of others who could answer, and were interested in making the payment. And he did this for the purpose, no one can doubt, to avoid publicity and to bring about a technical default.

Such trickery meets with no favor in courts of equity, and cannot be the foundation of a forfeiture.

There is evidence that the Atlanta National Bank was in the con-

spiracy with the Laniers. Its officers conveniently had no recollection of receiving the money sent from St. Louis on the 29th of December, 1890, until the 2d of January, when money sent by same mail went 80 or 100 miles further to West Point, and was received on the 31st of December. (Tr. 82, Ans. to 7th Int.)

The same bank, after receiving the money on the second, promised to wire Lanier at West Point to pay the coupons, but it conveniently sends a *night* message to make it a day later, and then makes a mistake as to the coupons to be paid.

Then its attorneys draw the bill and refuse to disclose who were the real parties instigating the suit. The interview between Orrick and Denson (Tr. 138) shows that the Atlanta National Bank was in the conspiracy notwithstanding it received its interest on the bonds in January, 1891.

Mr. Lanier then made no "demand" in the estimation of the law. His trickery and artfulness were resorted to for the purpose of avoiding the payment of the money he pretended to demand. There can be no default founded on such conduct. Authorities, *supra.*

There is thus no default, so as to make the bonds due before their time, either under the article of the mortgage or that in the bond.

There is another point to be looked at in the matter of the default as to the condition in the bond. The Atlanta National Bank had been advertised and accepted by the bondholders as the place of payment. (Tr. 132, 133.)

Lanier, it is true, swears he never collected any coupons there (Tr. 65), but others swear that he did. (Tr. 86.)

The payments alleged by Lanier to have been made in his office in West Point were made on the order of the Atlanta Bank. (Tr. 88). And the last dispatch to Lanier in January, 1891, was "to pay the coupons and charge the amount to the Atlanta National Bank." (Tr. 87.)

The money was in good faith placed with the Atlanta Bank to pay the interest. If Lanier intended not to accept that any longer as the place of payment, and to insist on the letter of the bond, it was his duty to give notice of his intention before insisting on a forfeiture.

Jones on Corp. Bonds and M., Sec. 383.

The question as to days of grace on coupons has been discussed in an argument made by others, but we will add this: That it is a question relating to general commercial law, as to which the courts of the United States are not dominated by local usages or laws. Nor is there any local law in the way, and the Georgia decision cited

is shown in the argument referred to to be only a dictum of the reporter.

The best author on the subject states that coupons are entitled to days of grace, and he gives a conclusive reason therefor. They are undoubtedly a part of the bonds, and after being detached commercial paper, so as to pass to *bona fide* purchasers free from equities, like bills of exchange. All such paper payable at a fixed time has days of grace, and it would be strange that the bonds should have this feature and the coupons not.

Jones on Corp. Bonds and M., Sec. 245.

If days of grace are allowed, this is an additional reason for holding Mr. Lanier's trickery to be unavailing.

BRICKELL, SEMPLE & GUNTER.

The foregoing elucidation of the fact that no forfeiture or penalty had been incurred by the failure to pay the interest on the bonds held by Lanier, into his hands, he having cunningly escaped an actual tender of the money, which he avoided with unjust, deceptive and fraudulent purpose, dispels the pretence that Robinson, or Lanier, in Robinson's name, had a leg to stand upon in a court of equity.

This absence of right or authority in Robinson, trustee, to represent any bondholders in this case, besides Lanier and those he controlled, is made clear in the decree of the court, dated March 30, 1895. The character and scope of that decree has been discussed in the briefs of appellants, on the motion for *certiorari* to perfect the record, and on the motion to dismiss the appeal to which reference is now made, in the argument on the merits, without repeating the same.

But it is fatal to this suit, that the Circuit Court found itself compelled, in order to retain the bill and grant any prayer it contained, to decree that Robinson, trustee, *did not represent the bondholders who had waived their right of action by "accepting" the payment of the interest coupons, held by them*, after January 1, 1891, and before the bill was filed in this case.

Robinson's scepter was thus divided and he was placed in the attitude of hostility to a large number of the bondholders he pretended to represent.

This attitude was due to the truth, as it was ascertained and reported by the special master in the cause, and confirmed by the court, but not as it was perverted in the bill.

Yet the bill was not amended so as to give the adverse bondholders a day in court to protect their interests against this superserviceable trustee, who still "deems it to their best interests," that he should be left to carry water on both shoulders and to force the belated bondholders into the service of Lanier.

The court, in order to retain its jurisdiction, under the facts stated in the bill, which were disproved by the report of the master, as to Robinson's right to represent the minority class of bondholders, decreed a foreclosure as to the Lanier faction, and refused it as to the others, thus leaving the deed half foreclosed and half in full vitality.

The personal decree for money, awarded to Robinson, with a writ of *fieri facias* for its collection, and against *all of the defendants*, was, in like manner, limited to the benefit of the Lanier faction for the sums found due to them, and was refused as to the others.

In the sale and purchase of the property the advantage, as to the amount of cash deposit, was given to the bondholders of the Lanier faction; whereby they were enabled to buy the property and pretend to pay for it with their bonds, and hold the others at arm's-length, for a lower price for their bonds.

The decree demonstrated both the want of equity in the bill, and the real purpose for which it was filed, namely, to enable Lanier to capture the trust property at less than one-third of its value.

There is no lawful reason why the decree should have divided this trust estate into two conflicting interests, and no other reason except that it was found necessary to do so to avoid the dismissal of the bill, the equity of which rested upon such loose averments as this. "The said Alabama and Georgia Manufacturing Company has failed to pay the interest on said bonds or a large majority of them, falling due July 1, 1890, and has failed to pay any of the interest coupons falling due January 1, 1891, and more than six months has elapsed since the said July coupons fell due, and they still remain unpaid."

The bill was filed on the 21st of January, 1891, when no default could have occurred on the coupons that fell due on the 1st of January, 1891, under the following stipulation in the bond, which is set forth in the bill. "In said bond, it is provided, among other things, as follows: 'And it is hereby expressly agreed by the said company

with each and any holder of this bond that in case of the non-payment of any interest coupon hereto attached, if such default shall continue for six months after maturity and demand of payment, the principal of this bond shall become immediately due and collectible.'"

The Judge of the Circuit Court, with the agreement in this bond before him, was compelled to hold that the coupons that fell due January 1, 1891, could not be in default, so as to force the whole bond debt to maturity when the bill was filed on the 21st of January, 1891. *So the court divided the remedy as to the different classes of bondholders giving the preference, in all respects, to the Lanier faction, who had really refused to accept payment of their coupons.*

It was this necessary array of conflicting interests of the bondholders, by classes, in order to have a class that Robinson, as trustee, in fact represented, for which purpose the suit was instituted that brought into the case the unexampled tergiversations that have attended every subsequent proceeding in the case.

The decree of March 30, 1895, was affirmed in the Circuit Court of Appeals and became the law of the case, but it was repeatedly departed from and, in effect, it was overruled by subsequent decrees, where its operation was found to be inconvenient to Lanier.

These irregularities are pointed out in the briefs of appellants on the several motions made in this cause, and reference thereto is respectfully asked.

Lanier found it impracticable to hold the members of his party to their service of his plan, and, on the 14th of September, 1894, the court, in its opinion, says: "It appears that after the purchase of the factory property by Lanier and others, as trustees for the bondholders, that certain bondholders were not willing to come into the scheme of reorganization which the bulk of the bondholders had assented to, *and it was necessary to pay them in cash*, the pro rata amount which their bonds would be entitled to, *from the proceeds realized at the sale*." This statement of the court antedates the decree of March 30, 1895, and discloses the reasons why Lanier was afterwards moving back and forth to have decrees set aside or modified, that were entered on his petition and, finally, after cutting down the sum for which the property sold in May, 1896, namely, $66,000.00 to $48,433.36, on the 15th of October, 1898, the terms of the sale were changed, after it had been confirmed, from a sale payable in *bonds* to a sale for *cash*, and from a purchase by Lanier and others, as trustees for the *bondholders*, to a purchase by Lanier for *his individual benefit*, and, in a decree of the 15th of October, 1898,

the court directed that, on the payment of the said sum of $48,-433.36, by said Lanier, that the title to the property should be conveyed to *him* or to such person as *he* should designate. The various successive steps that were taken in this case to reach that result, are stated in the above-mentioned briefs in this case, and attention is respectfully invited to their consideration without repeating them in this argument.

In that progress, Lanier and the Galeton Cotton Mills, which was a mere incorporated convenience to assist Lanier in his raid, held this valuable property since May, 1896, until October 15, 1898, two years and five months, *without the payment of any rents*, and during that period he had charged the bondholders interest at the rate of one per cent. per month, for the loan of $15,000 used by him in paying for the property, in the cash deposits required by the decrees, and in lawyers fees and other expenses in conducting this suit, which are simply enormous.

Thus Lanier succeeded, with the consent and assistance of Robinson, in capturing the property he set out in this suit to obtain, and the bondholders who would not enter into Lanier's plans, or who abandoned him, after they understood his purposes, lost about 35 per cent. of the sums due them on their bonds. For this service, Robinson was paid five hundred dollars, which came out of the bondholders, because it took that much from the fund arising from the sale of the bonds and other mill property, which was less than the bond debt.

BRIEF.

1. The subject-matter of this suit—the *res* being "real estate," "lands, including all tenements and improvements, including the cotton mill and all the machinery therein or thereto belonging, and all water privileges and riparian rights now owned" by the grantor in a deed of trust, and the greater part of the land conveyed by the deed being in Alabama, *the judicial power requisite to sell and dispose of said land and appurtenances and convey the title, through an officer of the court, as the same is invoked by this bill, is not a part of the judicial power conferred on the Circuit Court of the Northern District of Georgia, by the Constitution and laws of the United States*, and any decree on such a bill, except to dismiss it, *is extra judicial*.

The bill in this case and the decree rendered upon it cover the entire property included in the deed of trust, all of which is

real estate. The decree orders the sale of the entire property, in one body, by a commissioner of the court to be made, and it was made in the State of Georgia, in violation of the laws of Alabama governing judicial sales of real estate; and the title of real estate in Alabama was divested out of the mortgagor, and invested in the purchaser at said sale.

If an action of ejectment cannot be maintained in a court of Georgia for lands situate in Alabama, for a better reason a court in Georgia cannot foreclose a mortgage on lands situate in Alabama, and sell such lands to pay the mortgage debt. The court in Georgia, whether State or Federal, has no power or jurisdiction to render such decree.

A court sitting in one State, to which alone its judicial process can run, cannot foreclose a mortgage upon and decree a sale of land in another State. This is elementary law that is based upon the sovereign right of every State to exercise exclusive jurisdiction to control the judicial sale of lands situate within its boundaries.

Boyce *v.* Grundy, 9 Peters, 275.

This case is all fours with the case at bar.

Railroad *v.* Ramsay, 22 Wallace, 327.

Mansfield Railway Co. *v.* Swan, 111 U. S. 379-82.

Watkins *v.* Holman, 16 Peters, 26.

Morris *v.* Gilmer, 129 U. S. 325.

And the cases cited on points 10 *to* 19, *on pages* 78 *to* 83 *of appellant's brief in this case on the motion for certiorari at the present term of the Supreme Court.*

2. This bill is founded upon the alleged fact that the coupons attached to a majority, in amount, of the bonds issued under the deed of trust, which fell due on the 1st day of July, 1890, were due and unpaid on the 1st day of January, 1891, and at the date of the filing of the bill. The alleged debtor is a Georgia corporation, of which J. J. Robinson, who is a trustee (one of three) in said deed, was also a director of said company, and L. Lanier, who was the principal holder of the said unpaid coupons, was also a director in said company.

3. Unless some fact is stated in the bill which shows that Robinson, as trustee, had the exclusive right, as against W. T. Huguley, his only surviving co-trustee, to assume to conduct the entire management of the trust, and to execute it in all its provisions, he was

compelled to join Huguley in his bill to foreclose the mortgage on the trust estate for the benefit of the bondholders, if the trustees could have any right, on the facts stated in the bill, to go into court and ask for such a decree. Huguley is made a defendant, but no decree is asked against him, as trustee, and no failure or refusal to do his duty as trustee is stated in the bill.

No fact is stated in the bill, which shows that Robinson, as trustee, had any such exclusive right. He assumes the attitude of the sole creditor, as trustee, representing certain bondholders as *cestuis que trust*, whose names are not stated, and sues alone upon a demand or cause of action that belongs alike and equally to him and Wm. T. Huguley as trustee if it has any existence. This is also one form of fraud upon the jurisdiction of the court which is apparent on the face of the bill; Robinson being a citizen of Alabama, and W. T. Huguley being a citizen of Georgia.

Faurie *v.* Tesson, 1 Black, 309; Railroad *v.* Orr, 18 Wall, 471; Walden *v.* Bodley, 14 Pet. 156; Carey *v.* Brown, 92 U. S. 171; Seymour *v.* Freer, 8 Wall. 202; Greenleaf *v.* Queen, 1 Pet. 108. And see the cases cited in appellants' brief on the motion for *certiorari*, at this term, on pages 89 to 95.

4. Another fact, concealed by Robinson but disclosed in the answers of the Alabama and Georgia Manufacturing Company and the Huguley Manufacturing Company, the only other defendants in the case, is that Robinson, at the time of the filing of the bill, and at the time of the alleged default in the payment of the coupons as stated in the bill, was one of the directors of the debtor—the Alabama and Georgia Manufacturing Company.

5. His suit against said company was, in legal effect, a suit against himself as a legal representative of the company, and was not within the jurisdiction of the Court so far as that jurisdiction is dependent upon the diverse citizenship of the parties plaintiff and the parties defendant in the suit.

The corporation being a citizen of Georgia, the directors are citizens of Georgia as to all suits brought against the corporation by the directors, and in this case, the suit being for the non-performance of a contract of the corporation to pay money at a certain time to third persons, the non-payment of which worked a forfeiture of the whole property of the corporation, Robinson as a director, was as much responsible for the default as any other director. The forfeiture he claims in his bill is based on his own default, for it distinctly appears in the proof that the assets of the corporation

were, at that time, amply sufficient to pay the interest on the bonds as it accrued.

Thus taking advantage of his own laches, which created the default, if any existed, he resorts to a federal court in his capacity of a citizen of Alabama, to sue himself as a director of a corporation in Georgia, concealing the fact, in his bill, that he is such director. This is a fraud on the jurisdiction of the court, by the concealment of a fact that he knew and was bound to disclose. If the jurisdiction of the Court did not depend upon diverse citizenship of the parties to the suit, here was a fraudulent concealment of a fact, materially affecting his right of action, for which a court of equity would dismiss his complaint.

6. The stockholders of the corporation have the clear right to hold Robinson amenable for his failure, as director, to have the assets of the company in the hands of H. C. Fisher, the receiver of the property under the decree of the Georgia Chancery Court, applied to the interest of this first mortgage debt as it fell due, and for the breach of trust under the deed, in not selling so much of the property conveyed to him for that purpose as was necessary to prevent the forfeiture on account of the non-payment of interest, which he is endeavoring to have declared and decreed in this bill.

7. He has permitted Lanier and his followers and coadjutors, to elect that the entire debt of $65,000.00 is due thirteen years in advance of the period of maturity stated in the bonds and in the deed of trust, and brought his suit to have a decree passed to confirm such election, when his duty as a director of the debtor corporation, and also as its trustee was palpably violated or clearly neglected.

8. Such a bill cannot contain equity, and such a fraud upon the jurisdiction of a federal court cannot entitle Robinson to a decree in this case.

Besides, the purpose of the suit was to obtain a technical advantage from the failure of the corporation, in which Robinson was a director, to pay a part of the interest on the debt for not more than one day after it fell due, and to force the maturity of the entire principal of the debt of $65,000. This was unconscionable. And a purpose, no less clear, is shown by the proceedings and proof in the case to use the power of the court for speculative purposes, at first for the benefit of Lanier and some of the bondholders at the expense of the defendants in the case and the other bondholders. The

ruling of the court in Randolph *v.* Quicksilver Co., 135 U. S., on page 460, is in point. That case is not nearly so strong as this in its appeal to the conscience of a court of equity to refuse its aid to an unjust, unscrupulous, and artful attempt to abuse justice.

9. Lanier, who drove Robinson into this suit for purposes that were only mercenary and not for the collection of a few coupons, the payment of which he refused to accept when offered before he filed his bill, was also a director of the Alabama and Georgia Manufacturing Company. It was his duty to save the whole debt of the company to the bondholders from being forced to premature payment, and the whole of the company's property from being swept away under a forced sale, thirteen years before the principal debt was due. As a bondholder, he held ample security for his investment at a high rate of interest, payable semi-annually.

His duty as a director of the Alabama and Georgia Manufacturing Company, and his legitimate interest as bondholder, united to induce him to prevent any forfeiture or confiscation of the property for the non-payment of the interest due on the bonds he held for himself and as the agent of others. But these things did not satisfy his greed, and thinking he could wreck the company by getting control of some of the bonds, and could force other bondholders to join him, or to sell their bonds to him at a heavy loss, he arranged to force a forfeiture and virtual confiscation of the property, and used Robinson as his tool.

10. At the outset Lanier avoided the court and its power to deal personally with him, and he put Robinson forward as his representative. He also avoided the State court, which held the property in the grasp of its receiver after it had been sold to the Huguley Manufacturing Company, and before that sale, for the express purpose of paying the interest on the bonds secured by the deed of trust as the paramount lien on the property, which that court declared to be a first lien, and carefully provided for its maintenance until the principal debt should fall due. And like many who suppose that the Federal courts have some supreme power to overrule or disregard the decrees of State courts, he fairly pushed Robinson, as trustee, into the Circuit Court of the Northern District of Georgia, with this clandestine and ruinous bill to masquerade as the fiduciary representative of this alleged benevolence to the bondholders.

11. But Lanier did not long remain in concealment as to his speculation. He bought the entire property at the sale under the

first decree in September, 1892, which decree was afterwards reversed and bid for at $66,000.00, payable in bonds, except $10,000 payable in cash. His purchase was made *as trustee for the bondholders*—all of them. At the next sale, in May, 1896, under the decree of March 30, 1895, he again bought the property as trustee for the bondholders at the same sum, $66,000.00, payable in bonds, except $5,000 payable in cash. Lanier became a party to the record in this case, as a petitioner for the confirmation of the purchase made by him in September, 1892, and as defendant in a petition for restitution to the possession of the property, filed by the Huguley Manufacturing Company in July, 1893, and in other petitions and motions presented by him in this case, so that he is *sub judice*, and his conduct from the beginning of the litigation is open to inquiry and the decree of the court.

12. It is perfectly established by the proofs in the case that Lanier's conduct, while he was a director of the debtor company, and while he was an agent of the National Bank of Atlanta, the depositary of the funds of the Huguley Manufacturing Company, furnished the sole pretext for the filing of this bill; that it was prepared by his direction by counsel employed by him, not for the collection of a debt due him or others represented by him, but for the purpose of creating a forfeiture under which a forced sale of the property would be had at which he would become the purchaser and final owner of this great cotton factory.

13. He has accomplished all of this, if the decrees in this case stand, and with it the ruin of other parties in interest. When it is material to equity and justice to know the motive and purpose of this suit, it can be ascertained only by the part Lanier has taken in it and not by the conduct of Robinson, who was his mere dummy. Two directors of a corporation acting in combination to wreck its property and to destroy thirty-five per cent. of the value of its bonds in the hands of innocent holders upon the pretext of a forfeiture contrived by one of them and supported by the other, and to have the title to all of its property secured to Lanier, one of the directors of the company, on the bill filed by the other as trustee for the bondholders is the true spectacle presented to a court of equity upon the facts of this case.

There can be but one just answer to the demand made in this suit for the confirmation of such transactions, and that is the dismissal of the bill without prejudice to the rights of the bondholders.

14. Some of the bondholders have, in their depositions, denounced Lanier's conduct and motives in this case, and would have defeated his scheme but for the fact that they were not made parties to the suit, but were held bound to the course that Robinson chose to pursue as their lawful trustee under the deed. The statement of Lanier made under oath to the court that he was the trustee of the bondholders to purchase the property for them, is impeached, first, by the testimony of several bondholders, and, finally, by the decree of the court, on the 15th of October, 1898, that Lanier had purchased the property for *himself*. Between these two trustees, Robinson and Lanier, both self-constituted, the one to force the sale of the property and the other to buy it, a disastrous wreck was accomplished, from which Lanier escaped with a title to the property and ten years of rents and profits, and Robinson with $500 for his services, and his lawyers and agents with many thousands of dollars for their fees. The bondholders lost 35 per cent. of their value, and the Huguley Manufacturing Company lost everything—property and ten years of rents and profits, amounting to several hundred thousand dollars, which were diverted and confiscated by the West Point Manufacturing Company.

15. Looking at the bill and the results it has led to, as to the crushing of a manufacturing enterprise that was in successful progress, and as to the loss of 35 per cent. of the face value of the bonds that were amply secured to the holders, and had back of them the decree of a competent court of Georgia to compel the payment of interest on their bonds, and to compel the preservation of the property, and the care of the Huguley Manufacturing Company, who held possession of the property under that decree and in subordination to it, for which possession they had recently paid a sum not less than $120,000 in cash and in debts due them under that decree, it is difficult to realize that all this disaster could have been worked through a proceeding in a court of equity.

16. The surprise at these results is only increased by the fact that Robinson, in his bill, states so much of the proceedings in the Chancery Court of Troup county, Georgia, as shows that said court had fixed this deed of trust upon the property as a continuing lien, and that "said sale was made subject, in all respects, to the rights and lien of *your orator as trustee for the holders of said first mortgage bonds.*"

But he omitted to state that said Chancery Court had continued the receiver in his office under an express order to provide for and

pay the interest on these bonds, and held that power and jurisdiction over the property when the bill in this case was filed.

17. On the 22d day of May, 1889, the Chancery Court of Troup county, Georgia, made a decree in the case mentioned in Robinson's bill, filed in this case, and the court having, before that time, appointed H. C. Fisher as receiver in that case, the decree of the court rendered on the 15th of November, 1889, ordered the sale of the property by the Receiver on the first Tuesday in January, 1890, and it was then sold and was purchased for the Huguley Manufacturing Company, as stated in the bill in the case.

The order made on the 22d of May, 1889, in said cause, was as follows: "Said Fisher, receiver, shall promptly pay the past due interest, and the interest to accrue, when due, on the first mortgage bonds of said corporation out of any funds he may have while he remains in office." And the evidence shows that the receiver had ample funds on hand with which to pay said interest on July 1, 1890, and January 1, 1891. (See deposition of W. T. Huguley of May 30, 1894.)

After said sale said receiver continued to pay the interest on these bonds, through L. Lanier, as his agent, and he never resigned or has been discharged from his office of receiver.

The answers of the Alabama and Georgia Manufacturing Company and the Huguley Manufacturing Company in this case, state the nature of the proceedings in the Chancery Court of Troup county, Georgia, and show the connection of L. Lanier, A. T. Dallis and J. J. Robinson with the case and that they were all parties in interest and were bound by all the orders and decrees made in the cause.

18. At any time Fisher, as receiver, could have resorted to any property of the Alabama and Georgia Manufacturing Company, to pay the interest on these bonds, including the property which had been sold subject to these liens, and he had the decree of the court authorizing him to do so. But Robinson, trustee, resorted to a Federal court to obtain authority to override the continuing power of the State court, through its receiver, and to force another sale of the property, at which Lanier was to be the purchaser and beneficiary.

19. The Georgia court had made the most careful provision for the protection of the first mortgage securities, while selling the residuary interest of the Alabama and Georgia Manufacturing Company in the property, for the payment of its other debts then due.

The first mortgage debt, as this debt was styled in the decree, had then about fifteen years to run and the bondholders did not wish their investment to be disturbed. The company was embarrassed with other debts, all of which were satisfied out of the proceeds of the sale of the residuary interests to the Huguley Manufacturing Company, whatever that interest may be, and that company at once began to repair and improve the property.

They were sedulous and careful to pay the interest on the mortgage debt, without which they would lose what they paid for the property. This was a just and wise arrangement for all concerned and, if it had not been disturbed by Lanier, it would have certainly paid the interest on the first mortgage bonds and the principal, when due, in 1904, and would have left to the Huguley Manufacturing Company a good profit on its investment.

This did not suit Lanier, who wanted the property, and he waited until he could find, or invent, a pretext for forcing another sale of the corpus of the property, for the alleged benefit of the bondholders, and rushed into a court of the United States to get it.

As a *stockholder*, *bondholder*, and *director* of the Alabama and Georgia Manufacturing Company, and an active promoter of the suit in the Georgia chancery court, he got the full benefit of the decree in that case, which satisfied all the debts of the company that were due, and retained the corpus of the estate, under the control of the court, to pay the bonds that he and others held. He waited until the Huguley Manufacturing Company had freed the property from all debts and liens, except the first mortgage lien, in which he was interested as a bondholder, and then proceeded to deprive them of the whole value of the possessory and other rights they purchased under the decree of the State court, by contriving an apparent default, not a real default, or, if technically a real default, one that was only accidental and was not by neglect or intended.

If he could obtain the property in this way it would be free of debt, and he and those who stood at his back would make a great profit while destroying a rival in business.

These facts, in substance, are set up in the answers of the defendants in bar of further proceedings in this case. They are proven conclusively in the evidence, and the court, upon consideration of them, should have dismissed the bill.

20. When the circuit court took further action upon the bill after the reversal of its first decree, having ousted the Huguley Manufac-

turing Company and decreed the possession of the Galeton Cotton Mills, only another name for Lanier and his associates, the Huguley Manufacturing Company filed a petition in the cause asking for restitution to the possession of the property and an accounting for rents and profits against said Galeton Cotton Mills and Lanier and his associates, who owned the stock and comprised the said company.

The Galeton Cotton Mills was incorporated in Alabama to hold the title to the property bought by Lanier as trustee for the bondholders, which he conveyed to said company. This sale to Lanier was confirmed by the court, and he created this corporation to hold the title beyond the reach of the court in case of the reversal of the decree of the court, and to shelter him and his associates—the West Point Manufacturing Company—against personal liability for rents and profits.

21. The petition for restitution was denied, except upon conditions that the Huguley Manufacturing Company could not comply with, and the Galeton Cotton Mills, a new-born corporation created for this sole purpose, was left in possession of the property until October 15, 1898, when, by decree of the court, the pretended title of that company, and all trusts in favor of the bondholders were swept out of Lanier's way, and the title of the property was decreed to *him* as an *individual*, and he was exempted from accounting for rents and profits after the second sale of the property in May, 1896.

22. On this feature of the case, there was much litigation, and the assignment of errors points out the rulings of the court to which exception was taken and are now here insisted upon.

23. The court ordered an accounting between the Galeton Cotton Mills and the Huguley Manufacturing Company, to cover the period from the first sale of the property in 1892 to the second sale in May, 1896, about three years and nine months. On this accounting the heaviest part of the costs and legal expenses accrued, and it was very great. In the outcome, the rentals charged against the Galeton Cotton Mills were applied to the bonded debt. Lanier claimed this fund as the right of the Galeton Cotton Mills, and the Huguley Manufacturing Company claimed it as a right that followed their purchase of the property. The questions that arose on that branch of the litigation are now and here presented in the assignment of errors.

24. There can be no good or just reason in law or conscience why the bondholders in this case, who have not consented to this litigation, whose rights have been represented by Robinson or Lanier, against their protests, and who have not had a day in court to protect their rights and interests as parties to this suit, in some form, should be compelled to accept 65 per cent. of the face of their bonds at the end of ten years' litigation, in which they have not participated and have not encouraged, while Lanier, the actual promovant of the litigation, comes out of it as the owner of this splendid property, and his West Point Manufacturing Company (through the "dummy" corporation) pockets the rents and profits for the ten years. And if the Supreme Court sustains the jurisdiction of the Circuit Court and the equity of the bill for any purpose of relief justified by the facts stated in it, it is respectfully insisted that it should set aside the decrees for the sale of the property and decree an account for the rents and profits against the parties that have enjoyed them.

25. It is manifest and, indeed, it has been established by the accounting for the rents and profits of this property, from September, 1892, to May, 1896, in this case, that the net profit has been more than sufficient in each year, from 1892 to 1898, to pay the interest on the debt as it accrued, and quite sufficient to have paid the principal debt when it is due. And this would have been the result if Robinson had applied for a receiver, according to the prayer of his bill.

The evidence shows conclusively that the receiver, if appointed would, by this time, have earned money enough, above all proper expenses, to have paid this entire debt.

26. Robinson saw this necessary result and shrunk from it by declining to move for a receiver, because if a receiver should be appointed he would succeed to the legal title of the trust property as the legal custodian, and would represent the interests on which Robinson's right to come into court rested, and his case would fail for want of diverse citizenship between the real parties in interest in the suit.

Lanier saw this, and did not want a receiver to hold and operate the property, but wanted Robinson, his facile servant, to demand the sale of it, so that he could organize a syndicate, a conspiracy of bondholders, in fact, who as "a majority in amount," could control the purchase with their bonds, and he could control them.

27. If there is any feature of this case that is sustained on equitable grounds, it is the demand for a receiver; yet that demand is not supported by any necessity stated in the bill.

And it is a sad misfortune that a receiver was not appointed to keep the possession and control of the property out of the hands of Lanier and his Alabama corporation—the Galeton Cotton Mills—which was created for no other purpose than to receive and shelter Lanier's booty in this litigation.

28. But the Circuit Court, in its decree of October 15, 1898, set aside, in legal effect, all the decrees of sale made in this case, in 1892, and on the 30th of March, 1895, and in May, 1896, and the sales under them, which were made to Lanier and two associates, which were confirmed and conveyances made to said purchasers, as trustees for the bondholders, which purchases were payable in bonds, and were reported as having been paid for in bonds; and the bonds were surrendered in payment, unless the court was defrauded by the false affidavits of the purchasers.

29. Not only were the former decrees set aside by the decree of October 15, 1898, but the sales made under them were sustained *and the terms were changed* after the sale from *bonds* to *cash*, and the amount of the purchase price was reduced, and the purchase made and reported and confirmed as a sale to Lanier and two associates, as trustees for the *bondholders*, was changed to a sale to Lanier for his *personal benefit*, and the title was ordered to be made to *him*, or to such person as *he* might designate.

30. But if this extraordinary metamorphosis in the decrees of the court, which, by relation back to the date of the sale, changed the terms of the sale and the character in which the property was purchased, did not, in fact, exist, and if the decrees had been regular and lawful, yet the conduct of Lanier, in his manipulation of the power and credit of the bondholders, in making those purchases, should be held to set aside and annul his purchase of the property, and it should be held as being liable to the trusts expressed in the deed of trust, or that Lanier and his associates in this scheme of wrongdoing should be held to account for the rents and profits, and for all wastage of the property as a trustee *ex maleficio*.

31. The assignments of error point out the improper rulings that protect Lanier in this unconscionable course of conduct, the chief of which is, that by said rulings and decrees Lanier's title to

the property, in his own right, relates back to the order of sale, and to his purchase as a trustee for all the bondholders, and changes that decree, after two years and five months had elapsed, to a decree for cash, so that he would, during that period, escape all liability for rents and profits to the bondholders or to anybody. Lanier purchased this property as trustee for *all* the bondholders, and so stated under oath in his petition for the confirmation of the sale. This made him liable to the bondholders for the rents and profits of the property, so long as it remained in his possession, but the change made in the order of sale, and in the terms and conditions of the purchase by the decree of the 15th of October, 1898, relieved him of that liability and discharged the property from a trust fixed upon it in May, 1896, both by the order of the court and the admissions of Lanier made of record and under oath.

32. Under the terms of the purchase of the property made by Lanier in May, 1896, he became a trustee of the title, possession, income and profits thereof, to the bondholders. These rents and profits came into his hands while in possession under that purchase; and the title which he afterwards procured by a change in the character in which he made the purchase is still held by him in trust for the bondholders, and any increase in the value of the property enures to the bondholders, as to whom he has changed his relations by his wrongful act, from that of an express trustee to that of a trustee *ex maleficio*, and he and the property are liable to them accordingly until their debt and interest are fully paid, and any residue after such payment belongs in equity to the Huguley Manufacturing Company, or to the Alabama and Georgia Manufacturing Company.

33. The assumption of Robinson in filing this bill, in his character and upon his supposed right as trustee, is false in law, and the proof in the case shows that it was false in fact. Instead of protecting the bondholders in the progress of the cause he stood by and witnessed Lanier's false dealing with them, not only without protest, but he received $500.00 from the fund that belonged to them for his services in bringing the suit.

In the bill it was disclosed that Robinson did not, in fact, represent all the bondholders but only a majority in interest, and no bondholders were named in the bill.

As the case progressed and when the fact appeared that Lanier intended to capture the property for his own advantage, and his

conduct became distinctly hostile to the other bondholders, it w manifest that Robinson's trusteeship was the only means of keepi the minority bondholders in a state of enforced silence, while was used by Lanier to despoil them.

At the beginning of such a suit, upon a contract containing pr visions as to future rights and interests that a trustee in the de has no right or power to control, the bondholders (or a bondholde representing that class) are indispensable parties to the suit, defendants or as complainants, if their citizenship entitles them sue in a Federal court.

And in the progress of such a suit, when it appears that innoce bondholders are threatened with injustice by a bondholder who made a party, and is using that character to do them injustice, it b comes the duty of the court to require that they be made parti defendant, or else dismiss the bill.

34. The following extracts from depositions in this case show part the conduct of the case by Lanier and how far he or Robins had the right to represent all the bondholders whose interests a directly and most seriously affected by it.

EXTRACTS FROM THE TESTIMONY OF L. LANIER,

2d Printed Record, pp. 83–84.

Cross-Examination by Judge Chilton, of Counsel for t Huguley Manufacturing Company, Movants and Inte veners.

Q. Were you present at Hamilton, Georgia, when a sale same property, under prior decree in the case of W. H. Huguley Co., against Alabama & Georgia Company was had?

A. Yes, sir.

Q. How long was that before this last sale?

A. I think that sale was in January, 1890—the sale under t Huguley decree.

Q. What did the property sell for there?

A. I don't know. About $68,000.00, I think.

Q. That sale was subject to the first mortgage bonds, was it no

A. Yes, sir.

Q. Subject to these same bonds that were foreclosed under t latter suit?

A. Yes, sir.

Q. And it brought about $68,000.00 over and above the fi

mortgage bonds; the buyer at that sale bid under the decree in his favor; but I will ask you whether or not there was another bid of nearly the amount that was actually bid for it?

A. Yes, sir; I think the property started considerably below that and bid up to that point.

Q. Wern't you interested in the bidding at that sale?

A. I was very near a man who was bidding on it.

Q. Didn't you have a business interest in connection with it?

A. Nothing of a serious nature at all; not after I learned that the whole property was to be paid for in debts.

Q. Isn't it a fact that there was a bid at that sale in money, a *cash* bid?

A. I don't know of any.

EXTRACT FROM TESTIMONY OF L. LANIER,
2d Printed Record, pp. 87, 92, 102, and 119.

Cross-Examination by Judge Chilton, of Counsel for Movants.

Q. Well, I will ask you this first: was there any agreement in writing as to the stock of the company, how it should be issued and how held?

A. None at all. The stock was issued to each one of these incorporators to the extent of his claim.

Q. There was no money paid in on the stock?

A. No, sir; the stock was issued to the bondholders.

Q. So that when you re-organized you issued to each bondholder the stock of the corporation to the amount of the bonds he held?

A. Yes, sir.

Q. What was the capital stock of the corporation?

A. $65,000.00.

Q. The same as the bonds?

A. Yes, sir.

Q. You have stated already that the bonds were issued as a substitute for the bonds taken up in this purchase.

A. Yes, sir.

Q. The bonds issued were $65,000.00?

A. Yes, sir.

Q. A new issue of bonds by the Galeton Company?

A. Yes, sir.

Q. Then you issued to each bondholder an amount of stock equal to the amount of bonds he held?

A. Stock was issued to each of them prior to the issue of the bonds.

A. The whole stock was transferred to the West Point Manufacturing Company in consideration of their advancing this money.

Q. Advancing who this money?

A. Money to pay the costs in the case.

Q. The West Point Manufacturing Company, then, paid the costs?

A. That stock goes to the individual stockholders unless——

Q. Was the stock transferred to the West Point Company then?

A. Yes, sir.

Q. Now, are the individuals composing the directory of the West Point Manufacturing Company the same as those composing the directory of the Galeton Cotton Mills?

A. Yes, sir.

Q. It is all run under one management?

A. Yes, sir; the same president and the same secretary and treasurer.

Q. So you issued stock to the amount of $65,000.00, and bonds to the amount of $65,000.00 on this property?

A. Yes, sir.

Q. How long after your purchase?

A. Immediately afterwards.

Q. I believe you stated that there was no cash paid in on the stock?

A. The cash was in payment of the costs—$10,000.00.

Q. That, you say, was a loan?

A. That was.

Q. I will ask you whether there was any cash paid in by the stockholders for the stock?

A. Except as to the amount; that's all paid in.

Q. The $10,000 that you say you borrowed, do you consider that as part of the capital stock; who paid it; and on whose stock was it paid?

A. That was paid by the West Point Manufacturing Company.

Q. When?

A. Immediately after the sale, when they bought the property.

Q. When they bought the stock from the bondholders to whom it had been transferred?

A. In about thirty different places.

Q. When the West Point Mills bought that stock from the bondholders to whom it was originally issued, they paid, or secured to be paid, the $10,000 to Hooper; is that it?

A. Well, there were other amounts paid besides that; $10,000 didn't cover the cash that was paid.

Q. $10,000 didn't cover the cash that was paid into court?

A. It was not quite all of it; some more over that.

Q. How much more?

A. I don't remember now.

Q. As much as a thousand dollars?

A. I should think there was that.

Q. Can you give me the items?

A. No, sir.

Q. What you paid was paid into court, wasn't it?

A. No, sir; $10,000 was paid into court. Yes, sir; whatever was paid was paid into court.

Q. These bondholders when they held stock, and when it was issued to them, they paid no money on the stock, did they?

A. No, sir.

Q. What is your individual interest in this matter?

A. It is whatever my interest may be in the stock of the West Point Manufacturing Company.

Q. What is your interest in the stock of the West Point Manufacturing Company?

A. You mean the shares; the amount of my stock in the West Point Manufacturing Company?

Q. Your interest in the stock?

A. How many shares I own; is that your question?

Q. Yes.

A. I own 1,467 shares.

Q. What is the capital stock of that company?

A. Four hundred thousand dollars ($400,000).

Q. Does that include the stock that has been transferred by the Galeton Cotton Mills to it?

A. No, sir.

Q. Do you include in your fourteen hundred shares the stock of the Galeton Cotton Mills?

A. No, sir.

Q. You say your proportion was fourteen hundred shares?

A. You asked me what my shares in the West Point Manufacturing Company was and I said 1,467 shares.

Q. And you say that your interest in the Galeton Cotton Mills is in proportion to your interest in the West Point Mills?

A. Yes, sir.

Q. What is the par value of the shares of the West Point Mills?

A. $100.00.

Q. So you own 1,467?

A. $146,700.00 out of $400,000.00.

Q. You say you had two conversations during the crying of the property?

A. Only one conversation before I made a bid.

Q. What was your bid?

A. $66,000.00, raising his $1,000.00.

Q. And you had but one conversation with him prior to that?

A. Prior to that bid.

Q. How much (insurance) was on the property at the time you bought it?

A. There is no telling. I don't know. I suppose about $200,000.00.

Q. Don't you know for what amount that property had been insured, the main building and this machinery, for several years?

A. I don't know. They could have insured it to that extent if they had wanted to.

Q. You were once the manager of the Alabama and Georgia Manufacturing Company?

A. Yes, sir; up to 1880.

Q. How much was it insured for during that period?

A. I do not remember.

Q. Have you no recollections?

A. No, sir. About $150,000.00, I suppose.

EXTRACT FROM AMENDED ANSWER.

ALABAMA, &C., MFG. CO., et al., *v.* J. J. ROBINSON, Trustee, et al. } Petition, &c., U. S. Circuit Court, Northern District of Georgia.

"And now come the defendants, and amend their answer, and aver as follows:

"The owners of the Galeton Cotton Mills state they did, on 10th day of October, 1892, assign and transfer to the West Point Manufacturing Company all of the stock of said cotton mills, in consideration of the sum of $16,600.00, in cash paid, and an agreement on part of said West Point Manufacturing Company to assume the mortgage debt of said Galeton Cotton Mills to the amount of $65,000.00, and an agreement to pay the said annual interest to become due from time to time on said bonded debt.

"After said Lanier, Dallis, and Kirby had transferred the interest purchased by them, as alleged in the answer to said Galeton Cotton Mills, the said cotton mills executed and delivered to L. Lanier and

A. T. Dallis a deed of trust covering all of said factory property, for the purpose of securing the negotiable mortgage bonds of said company, to the amount of said $65,000.00, and interest, and said West Point Manufacturing Company has paid the interest on said bonds as the same has accrued. Said bonds, so issued, are payable to bearer, and some of them are in the hands of *bona fide* holders, not parties to the original transactions referred to."

DORSEY, BREWSTER & HOWELL,
B. F. ABBOTT,
Defendant's Solicitors.

EXTRACT FROM THE TESTIMONY OF W. T. HUGULEY, WITNESS FOR THE HUGULEY MANUFACTURING COMPANY.

(*Direct interrogatories. Answers to.*)

"I never, at any time, voluntarily abandoned the first appeal. Our failure to prosecute it was from sheer inability to make other than the supersedeas bond, as explained (*i. e.*, by the American Surety Company). Our inability grew out of the following facts:

"1. Because we had turned over in 1888 to Fisher, the receiver of the Alabama and Georgia Manufacturing Company, a large amount of 'quick assets' (about $40,000), in self-defense, having the following order of court (May 22, 1889), passed:

"*Said Fisher, receiver, shall promptly pay the past due interest, and the interest to accrue, when due, on the first mortgage bonds of said corporation out of any funds he may have while he remains in office.*

"The receiver, thus charged with this particular duty, did pay said interest and continued to act under said order up to date of said alleged default, and it is now insisted that said receiver *had in hand on the date of said alleged default ample cash funds with which to pay said interest*, and he undoubtedly would have paid said interest had proper demand been made on him. It was his duty, as the only legal representative (except the president) of the Alabama and Georgia Manufacturing Company to pay said interest, and failing to have done so, he should have taken steps, with the funds in hand, to have aided in making the supersedeas bond, and thus avert the foreclosure. Though importuned to do so, he took no steps to carry out said original order of the State court, and thus the funds in his hands were not available in the protection of his said trust."

* * * * * * * *

"In conclusion, it is proper for me to explain that, because of the order of the State court, I had to transfer to the receiver about

$40,000 of 'quick assets,' and in view of the special order of court charging him with the particular duty to pay said interest, and knowing he had ample cash in hand, I specially relied on him to meet the interest and otherwise take such steps as would protect his said trust under the circumstances.

"Being 'tied up,' as explained, both through the receiver and the contract with said D. Jannopoulo, and embarrassed by the litigation, my firm and corporation were so 'handicapped' that I could not make the supersedeas bond locally, particularly within a day or two allotted me after ascertaining the Surety Company's bond had been rejected."

Interrogatory 9. "I was present at the receiver's sale at Hamilton, Georgia, in January, 1890. The property was then sold, as follows:

1.—Subject to the 1st mortgage bonds.....	$65,000 00
2.—Subject to certain Alabama executions in favor of Bank of La Fayette, Doss, et al., now owned by us (about).....	16,000 00
3.—Executions in favor of W. H. Huguley & Co., considered as *cash*.....	56,880 00
4.—Cash from W. H. Huguley & Co.....	12,120 00
Total cost (as to Huguley M'f'g Co.).....	$150,000 00

The next highest bid was within $500.00 of the bid at which the property was knocked down. *It was made by L. Lanier, presumably for the Lanier-Boynton syndicate*, and had it prevailed, they would have assumed:

1.—The First Mortgage Bonds....	$65,000 00
2.—And then had to pay *cash*.....	84,500 00
Equivalent to cash bid of.....	$149,500 00

"Under interrogatories 5th and 6th, I have already testified that the physical condition of the property, on September 6, 1892, had been improved 40 or 50 per cent. over the physical condition at the time of the receiver's sale in January, 1890, and at that time about $20,000.00 of improvements had been added by the Huguley Manufacturing Company between said dates.

Interrogatory 10. On each of said dates, viz., July 1, 1890, January 1, 1891, and September 6, 1892, respectively, we were carrying on the main building and machinery therein, alone, in the best stock companies insurance to the amount of $200,000.00.

I attach hereto, marked "Exhibit H," the pages 44–47–48 from the printed record in this cause, which contain extracts from the testimony of M. B. Torbett, confirming the amount of insurance carried, and likewise proving that the first $65,000.00 of said $200,000.00, had been duly and properly set apart in favor of the first mortgage bondholders.

The difference, at said dates, between the *actual* and the *insurable* value of such cotton mill properties is always 15 to 20 per cent. in favor of the actual value; that is to say, that much margin above the insurable value being required. This was the basis upon which our property was estimated by Mr. Torbett and all the other insurance experts whose particular business it was to visit and inspect the mill from time to time.

Answer to Cross-Interrogatory No. 9. "The Alabama and Georgia Manufacturing Company did have interest in said litigation as principal defendant. All its interest in the *plant only*, was sold at the receiver's sale at Hamilton, but this by no means exhausted all the assets of the company. At the time of the sale of this realty the receiver of the State Court still held in his possession a large amount of supplies and findings, and also cash and other 'quick-assets,' valued at about $20,000.00, all of which were available to meet the interest on the first mortgage bonds in conformity with the express order of the State Court of May 22, 1889, wherein it was specially enjoined on said receiver to pay promptly 'out of any funds of the corporation he may have so long as he remains in office' the interest on said bonds. Suffice it, the receiver is still 'in office' and was 'in office' on January 1, 1891, and on that date *had ample cash funds with which to have promptly paid the interest had due demand been made upon him.*"

Answer to Interrogatory 5. "In consequence of the receivership, which dated from October, 1888, the improvements and betterments, which for years prior thereto had been steadily going on, necessarily were ceased pending the receivership; little or no new supplies and findings, etc., were purchased even during the time the mill was kept running, and finally, about June, 1889, *by reason of certain attachments levied on the 'quick-assets'* of the receiver (at that time amounting to about $25,000.00), the receiver was compelled to close down the mill." * * *

Answer to Interrogatory 6. "Notably one of the biggest improvements instituted consisted in the thorough overhauling of all the English spinning frames (about 2,000 spindles), which by the application

of a new device increased their revolutions 50 per cent. and made them as efficient as the latest improved spinning. In addition to this, all the new machinery which had been bought in 1887–8, including the 12 40-inch looms, were applied, together with the 40 36-inch looms and outfit. All these repairs, new machinery, betterments, etc., were accomplished at an outlay of $15,000.00 to $20,000.00.

"During the administration of The Huguley Manufacturing Company, new supplies and findings were purchased at a cost of $11,000.00."

From the foregoing, it will be seen that from the date they succeeded to the property in January, 1890, the steady purpose and policy of the Huguley Manufacturing Company was to bring the mill up to the highest standard of efficiency. I can therefore answer, of my own knowledge, that at the time of the sale under the decree to Dallis, Lanier & Kirby, the physical condition of said plant and machinery was most excellent.

As more than half of the machinery had been applied within an average of 4 or 5 years, and much of it as late as 1887–8, all at a cost of exceeding $100,000.00, with the overhauling mentioned, the equipment on September 6, 1892, as an entirety, was well nigh modern, certainly for the purposes designed was well capacitated to turn out a maximum production at minimum cost.

As compared with the condition of the plant and machinery during the administration of the Alabama and Georgia Manufacturing Company, particularly during the interim of the receivership, the condition of and capacity of the Huguley Manufacturing Company's plant at the time they vacated on September 6, 1892, was decidedly better than it had ever been—by experts such as Owen, Higgenbothem and others, reckoned at 25 to 100 per cent. better.

As nearly as I can approximate, the increased efficiency and capacity of the plant, as a whole, on September 6, 1892, was fully 40 to 50 per cent.

EXTRACT FROM THE TESTIMONY OF M. B. TORBETT, INSURANCE EXPERT AND AGENT, WITNESS FOR MOVANTS AND INTERVENERS.

(Direct examination by Col. N. J. Hammond, of Counsel for the Huguley Manufacturing Company, Movants, etc.)

Q. To whom was the insurance payable?

A. To Robinson, Yancey and Huguley.

Q. Is that insurance payable to the different persons and to the different amounts there stated in a mere arbitrary thing, or was it fixed by inspection?

A. When it was turned over to me I went there; went over the mill, and made a thorough inspection.

Q. What proportion is there between the value of the property and the $200,000.00 of aggregate insurance represented on said list?

A. *I thought it worth more than the* $200,000.00 *or else I would not have taken the risk.*

Q. What was and is the usual proportion between *actual and insurable* value?

A. *On manufacturing property like this we always have actual value at least* 15 *per cent. or* 20 *per cent. larger than the insurable.* I visit the mill at least twice a year for inspection.

Q. Do you know whether in that time the property has increased or decreased in value?

A. I do not think it has decreased, *for they seem to be making improvements.*

EXTRACTS FROM TESTIMONY OF G. A. HUGULEY, WITNESS FOR HUGULEY MANUFACTURING COMPANY, MOVANTS.

Answers to direct interrogatories:

Interrogatory 1. I know the parties. I reside in Chambers county, Ala., two miles from West Point, Ga. * * *

Interrogatory 2. I was one of the bondholders of the Alabama and Georgia Manufacturing Company, owning $2,500.00 of said bonds. I also represented the bonds owned by Mrs. F. H. Huguley. Before the sale of the mill belonging to said company (September 6, 1892), I was present at certain meetings of the bondholders of said company.

Interrogatory 3. About two weeks prior to said sale there was a formal meeting or conference of the bondholders which was held in the Young Men's Library rooms, in Lanier's Bank building. Said meeting had been called by L. Lanier, who, with A. T. Dallis, was most conspicuous and acted as chief spokesman during the deliberations which took place. J. T. Kirby, of Newnan, Georgia, acted as secretary.

There were two classes or wings of the bondholders, one of which consisted of those bondholders who were the real parties complainant in the action filed by L. Lanier and others looking to the foreclosure of their bonds. These complainants were Mrs. Lizzie F. Yancey, Miss Susie Huguley, A. T. Dallis, estate of M. T. Walker, and L. D. Hutchinson, representing in all about $38,000.00 of the first mortgage bonds. These were the parties who had declined to

receive their interest and had allowed their names used in the filing of said suit.

The other class of bondholders, who had collected their interest on due presentment of their coupons at the proper time and at the proper place and to the proper person, and who, accordingly, never had any grievance, and therefore were never parties to said suit, consisted of myself, Mrs. F. H. Huguley, Mrs. Sallie Huguley, the Atlanta National Bank, J. F. Hooper, the estate of Elliott, and D. Jannopoulo, representing about $27,000.00 of said first mortgage bonds.

In explaining the object of said caucus or conference, L. Lanier stated that the object of said meeting was to induce all the bondholders to join together and "pool" their bonds for their mutual benefit and protection. To this end, he recommended that all the bonds should be surrendered or consigned to a committee consisting of L. Lanier, A. T. Dallis, and J. T. Kirby, which said committee were to bid all the bonds at said sale for the joint account, benefit, and protection of said bondholders, whether complainants or non-complainants. He stated that in this manner all parties concerned would either be able to buy the mill or in the event their bid did not prevail, we would be all assured of getting par at least for our bonds.

It was distinctly stated and understood that this committee was to receive our bonds in trust, and as such trustees they were to act for all the bondholders to the best interest of each and all.

Among other arguments used to carry his point, L. Lanier stated that in the event the bondholders' bid prevailed at said sale, said committee would be charged with the duty to issue bonds or stock on the *pro rata* basis, each person's interest in and to said property being represented in proportion to the amount of bonds held or contributed by each at the time of making said bid.

Another argument used by L. Lanier to induce myself and the other parties who had received their interest to pool our bonds in the purchase along with the real parties complainant, was the statement that even if we did not so pool we were liable for our share of the costs, just the same as those who had prosecuted the suit.

A. T. Dallis corroborated all these statements made by L. Lanier. Still another promise was made by L. Lanier to induce us to adopt his plans. He assured us that in the event the bondholders' bid should prevail, the new company, which the bondholders as purchasers should organize, would see to it that large improvements, repairs, machinery, etc., would be immediately applied, thus enhancing the value of the property as a security to the bondholders.

Interrogatory 4. The argument advanced by L. Lanier as a reason why decisive action on the part of the bondholders was necessary, and the one which seemed to carry with it the greatest weight with all the bondholders, was the *positive* and *unqualified* statement made in that caucus by L. Lanier that the mill *was not insured, and in the event of fire that the bondholders would suffer total loss.*

Answer to Interrogatory 5. Yes, there was another meeting or conference of the bondholders, which was held in Lanier's or Dallis's room in the Kimball House on the morning just preceding the sale of September 6, 1892.

The object of said caucus, as explained by L. Lanier, was to give Mrs. Sallie Huguley a final opportunity to join said pool, but particularly for the purpose of requiring all the bondholders to give their consent to the committee (Lanier, Dallis & Kirby) to hypothecate or pledge their bonds with Jno. F. Hooper, this being the condition exacted by Hooper before he would advance the $10,000 required by the court as the initial payment on said purchase. This arrangement had been made with Hooper by the committee in advance of our arrival in Atlanta, the committee having agreed to pay one per cent. per month interest on said money.

There was still another meeting or conference of the bondholders held in the Young Men's Library in West Point, Georgia, whereat we went through a farcical process of juggling, whereby L. Lanier first issued to the subscribers to the pool a batch of Galeton Cotton Mills' stock, or papers representing stock; then required us to surrender the latter and in its stead he gave us a receipt calling for as many bonds as we had stock.

Subsequently, two or three weeks thereafter, these said receipts were called in by him, and again he substituted therefor the bonds (so called) of the "Galeton Cotton Mills Company, of Chambers county, Alabama," which alleged bonds are without any power of sale, and contain on their face no guarantee on the part of the trustee that the property was to be kept duly insured to the amount of the bonds, both of which provisions are expressly stipulated on the face of the original bonds surrendered by me to the committee.

I was taxed with costs amounting to about four or five per cent. of my holdings, the justice of which I fail to see, since I have never been a party complainant in said suit, but on the contrary I, with the others mentioned, have repudiated said action as a fraud.

Cross-interrogatory 3. "This committee (Lanier, Dallis, and Kirby), though charged with the duty to take care of the interests entrusted to them, immediately after the sale ceased to act as a whole; L. Lanier having been the sole person who cut any figure in the distribution of the bonds." * * *

Cross-interrogatory 5. "I have never had any conversation with either of the counsel for movants. I came to testify in the case for several reasons. In the first place, because I feel that great injustice has been done not only to W. H. Huguley & Co. and the Huguley Manufacturing Company, but also to myself and every other bondholder, whether complainant or non-complainant, who has allowed himself influenced by L. Lanier. In the second place, because certain representations made to myself and others of the bondholders by L. Lanier for the purpose of inducing us to allow our bonds pooled in said purchase were not true. In the third place, because I now know that I was so deceived to my absolute loss, not only in having been coerced into an arrangement which lost me a desirable investment, but subjecting me to a taxation of costs, etc., without having received in return anything like my *pro rata* interest to which I was entitled. The alleged Galeton bond itself having turned out to be nothing like as good a security as the original gilt-edge bond, which I was deceived into surrendering."

Answer to Interrogatory 6. "I admit that the object of my participation in said meetings was prompted mainly in self-defence, because I was led to believe that the representations made by L. Lanier as to *insurance* and other material statements were true, and so believing I was alarmed as to my security. I was especially influenced by his argument that if we did not pool with the complaining bondholders we might not get 50 cents on the dollar for our bonds. Being young and without legal advice and unduly alarmed, as I have since ascertained, I yielded to their importunities."

As to the property being "sacrificed," I cannot say positively how it affected others, but the suggestion was advanced that if we did not so pool the property might be sold and we be "mashed out," and many of us believed it.

Answer to Cross-Interogatory 7. As explained in preceding answer, I repeat that I believed "all that was done or said at the meeting inquired about." But, in the light of after events, I now realize that I was deceived, as explained, and that L. Lanier was actuated in all that was said and done not so much to protect bondholders, but to get possession of his rival's property without himself contributing one dollar to said purchase.

Answered, sworn to, and subscribed before us this the 11th day of June, 1894.

W. J. KIRBY, [L. S.]
Commissioner.

W. L. WILLIAMS, [L. S.]
Commissioner.

ANSWERS TO DIRECT INTERROGATORIES PROPOUNDED TO A. S. ELLIOTT, WITNESS FOR THE HUGULEY MFG. CO., MOVANTS AND INTERVENERS.

Answer to Interrogatory 1. Yes, I know the parties. I reside at the factory in controversy at River View, Chambers county, Alabama. * * *

Answer to Interrogatory 2. Individually I was not the owner of any of the bonds of the Alabama and Georgia Manufacturing Company, but I represented, as agent, seven thousand dollars ($7,000.00) of said bonds owned by my mother, sister, and brother.

I was present at two caucuses or conferences of the bondholders prior to said sale.

Answer to Interrogatory 3. The first meeting of the bondholders which I attended was held in the rooms of the Young Men's Library, in Lanier's Bank building, in West Point, Ga. The meeting was called by L. Lanier about two weeks prior to the date fixed for said sale. L. Lanier presided over the deliberations. He and A. T. Dallis took a most prominent part throughout the whole of these and subsequent proceedings. Mr. L. Lanier explained that he had a plan to urge which would protect the interests of all parties concerned.

There were two factions or parties of the bondholders, one consisting of Mrs. Lizzie Huguley Yancey, Miss Susie Huguley, the estate of M. T. Walker, A. T. Dallis, and L. D. Hutchinson, representing about $38,000.00 of the first mortgage bonds. These were the parties who had allowed the use of their names in the suit filed by L. Lanier and were the real complainants in said suit.

The other faction or party consisted of my family, Mrs. Sallie Huguley, Mrs. F. H. Huguley, G. A. Huguley, the Atlanta National Bank, J. F. Hooper, D. Jannopoulo, representiug $25,000.00 of said bonds. The latter class had collected their interest on presentment at the proper time and place, and therefore had never been parties to said litigation, but, on the contrary, had bitterly repudiated the whole attempt at foreclosure. Mr Lanier explained that to carry out his policy it would be necessary for both these factions to unite and pool their bonds, and urged that the bonds should be intrusted to a committee consisting of L. Lanier, A. T. Dallis and J. T. Kirby, who should act as agents or trustees for all the bondholders, and bid the full amount of all the bonds so pooled, for the joint account, interest and protection of said bondholders.

Acting upon Mr. Lanier's suggestion, R. A. Freeman, Mr. Lanier's attorney, drew up a certain agreement, which was signed by all

present except Mrs. Sallie Huguley. I did not keep a copy, but was prevailed upon to sign it upon the representations then made by L. Lanier.

In support of his plan, L. Lanier stated that by thus pooling, the committee could either bid the full amount of all the bonds, and thus guarantee the holders at least par, or in the event our bid should prevail we should own the property on a *pro rata* basis, in proportion to the amount of bonds each contributed to the purchase. He further promised that if the property was knocked down to the bondholders the new company, which the new company would organize, were to institute at once repairs and improvements thus increasing the security of the bondholders.

A. T. Dallis ratified all these representations of L. Lanier.

Answer to Interrogatory 4. The principal reason assigned by L. Lanier for prompt action on the part of the bondholders, was that the property *had not been properly insured and in the event of fire the bondholders would suffer serious loss.*

This statement he made in said caucus or conference, and greatly alarmed the bondholders, and more than anything else induced them to pool.

More than once he told me the same thing in private conversations also.

Answer to Interrogatory 5. There was a meeting of the bondholders in L. Lanier's room in the Kimball House on the morning the sale took place—a few hours before. The object of the meeting as explained by L. Lanier, was to afford Mrs. Sallie Huguley a chance to come into the pool, but especially for the purpose of authorizing the committee to turn over to the Atlanta National Bank the first mortgage bonds which we had surrendered before leaving West Point, said bank to hold same as security or collateral for J. F. Hooper for the $10,000.00 which L. Lanier had borrowed from Hooper some time before leaving West Point, on a rate of one per cent. per month interest, I think.

ANSWERS TO DIRECT INTERROGATORIES PROPOUNDED TO MRS. SARAH H. KYLE, WITNESS FOR THE HUGULEY MANUFACTURING COMPANY MOVANT AND INTERVENER.

Answer to 1st Interrogatory. My name prior to my marriage was Sarah H. Huguley.

Answer to 2d Interrogatory. Prior to said sale on September 6, 1892, there were such meetings of the bondholders of the Alabama and Georgia Manufacturing Company. The one I was prevailed

upon to attend was held in the rooms of the Young Men's Library in the Lanier Bank building. Present besides myself, G. A. Huguley, J. Elliott, Miss Lula Elliott, A. T. Dallis, L. D. Hutchinson, J. T. Kirby, L. Lanier and others. This meeting was called by L. Lanier about two weeks in advance of said sale of the property. Having yielded to the importunity of A. T. Dallis and others, who knew that I had never at any time been a party to said suit, I only consented to attend said caucus somewhat reluctantly. I, under protest, being actuated largely by curiosity, consequently not feeling in sympathy with the real complainants, and having no confidence whatever in L. Lanier, who himself I believe, did not own one dollar of the bonds, had used the names of others to engineer the suit. I held aloof and, although noticing closely all which transpired, I took little or no part in the proceedings. The purpose of the meeting, as explained by Mr. L. Lanier, was to induce those of us bondholders, consisting of myself, Mrs. F. H. Huguley, G. A. Huguley, the Elliotts, the Atlanta National Bank, J. F. Hooper, and D. Jannopoulo, who represented about $25,000.00 of the first mortgage bonds, and who, having always promptly collected our interest had never been parties to said suit, to join with the real parties complaintant consisting of Mrs. Lizzie Yancey, Miss Susan Huguley, the estate of Walker, and A. T. Dallis, representing in all about $38,000.00 of the bonds, and pool our bonds for the purpose of buying in the factory property at the sale.

Answer to 3d Interrogatory. "Mr. L. Lanier was present at the meeting I attended, presided over same or acted as chief spokesman, taking a most conspicious part throughout the entire proceedings. Among other arguments used to induce us to pool with the complaining bondholders was *a positive and unqualified statement, made in that caucus by L. Lanier, that the mill was at that time not insured and that in case of fire the bondholders would suffer total loss.*"

Answer to Interrogatory 4. "Upon my insisting that I knew the property was insured, because I had been told so by W. T. Huguley, one of the trustees and the party chiefly concerned in protecting the property; L. Lanier and A. T. Dallis in turn *repeated that the matter of insurance had been investigated and that they knew that there was no insurance upon the property.*"

Answer to Interrogatory 5. "Mr. Lanier urged the bondholders to pool their bonds, as explained, and in answer to second interrogatory. His scheme, as pointed out by him, was that a committee should be created or appointed by the bondholders, consisting of L. Lanier,

A. T. Dallis, J. T. Kirby, into whose hands, as agents or trustees, all the bonds were to be consigned. Said committee was to be vested with full authority and charged with the duty to bid the full amount of all the bonds so pooled for the joint protection and interest of all subscribers or bondholders. The object thus to be obtained was for them to bid the property up to an amount which would net each bondholder at least par, or in the event the bid prevailed then said committee was, of course, to see to it that each participant in the purchase should receive his *pro rata* share as represented by the amount of bonds thus contributed in and to said purchase. Acting upon L. Lanier's advice and representations all the bondholders present did sign or agree to sign an agreement to be prepared in accordance with the above by Freeman, Lanier's attorney, except myself. I declined to sign. For my part, believing that L. Lanier did not, individually, own one dollar of the bonds, and believing that he was setting a trap for his victims, and especially because I had no earthly confidence in the man I refused to join with the others in following his leadership in any connection. Accordingly, I placed my bonds in the hands of my attorney, Col. N. J. Hammond, to protect my interest in the premises, and it was in my interest and protection alone, and for no one else except his own, that he submitted that first bid of sixty-five thousand dollars ($65,000.00). *In face of this bid, and despite the fact that I had never been a party to the suit, but, on the contrary, I had informed J. J. Robinson, trustee, that I repudiated the whole foreclosure proceedings as a fraud, I was yet unjustly taxed on my six thousand dollars* ($6,000.00) *of bonds about twenty per cent.* (20%), *realizing only about eighty per cent.* (80%) *cash on the face value of my bonds.* With the exception of myself and D. Jannopoulo all the other bondholders, whether complainants or non-complainants, joined in the purchase of said property at said sale."

ANSWERS TO CROSS-INTERROGATORIES PROPOUNDED TO MRS. SARAH H. KYLE.

To 6th Cross-Interrogatory, she answers: "In my answer to the direct interrogatories propounded, I have already told all I know concerning the meeting of the bondholders and the object of same. Holding bonds secured by first mortgage of $65,000.00 on a property whose plant alone had cost over $320,000.00, whose main building and machinery therein alone was insured for $200,000.00 of which the first $65,000.00 had been set apart for the bondholders, representing a security whose interest had always been paid

promptly to the day when due presentment was made at the proper time and at the proper place and to a proper person, I for one failed to see, in the first place, the common sense for any bondholder allowing the use of his name by L. Lanier in instituting any foreclosure at all. I certainly fail to see any cause for the grave apprehensions felt and the extraordinary precautions urged by L. Lanier in the meetings to the end that loss might be averted to the bondholders from a sale which had been brought about by their own folly. Therefore, I, for one, never saw either occasion or necessity of devising a plan to keep the property from being 'sacrificed.' I could not conceive how such a 'sacrifice' was possible, at least as to those bondholders who had never been parties to said suit, unless, indeed, such sacrifice should result from their property being eaten up by court costs, of which I had already been taxed unjustly about 20 per cent. of my holdings."

"I have stated all I know of the meeting referred to in my answers to direct and cross-interrogatories."

To Cross-Interrogatory 7, she answers: "I do not know that all that was done or said at the meeting inquired about was done to protect the bondholders against loss. On the contrary, while urging his scheme of pooling for the nominal and ostensible purpose of protecting the bondholders, from all which transpired at said meeting and in connection therewith, particularly in view of the reckless misstatements made about insurance, etc., I was impressed with the belief that the real and sole purpose of L. Lanier, who was the most conspicious in all that was done or said, was to secure the control of the mill property without contributing, if possible, one dollar in and to said purchase. How accurate was the conclusion and how well Mr. L. Lanier succeeded is shown by the fact that, after saddling on his victims court costs, aggregating about 20 per cent. of their holdings, I am informed that in recognition of the vested rights of ownership acquired at said sale, L. Lanier has so distributed a so-called bond, in reality nothing more than a mortgage of the Galeton Cotton Mills, of Chambers county, Alabama, in proportion to a like amount of the original first mortgage of the Alabama and Georgia Manufacturing Company bonds. Said Galeton mill bonds, as witness is informed (and witness holds one of said bonds), is without power of sale and of no guarantee from the trustee that the insurance will be kept up. Witness is further informed that said L. Lanier, and who she believes never contributed one dollar in and to said purchase, either of bonds or money, has issued to himself all of the capital stock of the Galeton Cotton Mills

except $500.00 cash issued to A. T. Dallis and L. J. Blackman, which said capital stock in equity should have been distributed *pro rata* among those of the bondholders of the Alabama and Georgia Manufacturing Company, who had really contributed to the purchase of the property.

SARAH H. KYLE."

Answered, sworn to and subscribed before us this the 13th day of June, 1894, at White Cliff Springs, Monroe county, Tenn.

R. F. POND. [SEAL.]
A. B. TADLOCK. [SEAL.]

EXTRACT FROM ORIGINAL BILL OF COMPLAINT *in re* J. J. ROBINSON, TRUSTEE, *v.* THE ALABAMA & GEORGIA MANUFACTURING COMPANY *et al.*, AS TO THE MATTER OF FAILURE TO KEEP UP INSURANCE, AS ALLEGED IN SAID BILL.

"Among other things it is provided in said deed of trust, for further security of the holders of said bonds and coupons, that said Alabama and Georgia Manufacturing Company shall keep said property covered by said deed of trust insured against loss by fire in good responsible companies to the extent of sixty-five thousand dollars ($65,000.00).

"*Said company has failed to keep said insurance as provided, as orator is informed.*"

EXTRACT FROM TESTIMONY OF J. J. ROBINSON, TRUSTEE, RELATING TO ABOVE.

Direct examination by Col. N. J. Hammond, of counsel for the Huguley Manufacturing Company, Movants and Intervenors:

Interrogatory 1. "At whose instance did you, as trustee, authorize your name to be used in the bringing of said suit?" etc.

Interrogatory 2. "Upon whose information did you state in your said bill that said Alabama and Georgia Manufacturing Company's property was not insured as required by the contract?"

Answer to direct interrogatory 1. "I was requested by Mr. L. Lanier and N. D. Denson, as executor of the will of M. T. Walker, deceased, to institute suit to collect the bonds involved in this suit. I received a letter from Mr. L. Lanier asking me to do so. I did not preserve the letter and I cannot attach it. I know it was signed by Mr. Lanier. It was his handwriting which I know. He also requested me in person. * * * I have no personal knowledge that L. Lanier held any of the bonds.

To the second interrogatory, he says:

"I received information about the insurance from *Mr. L. Lanier* and W. S. Jackson, of West Point."

To the 3d Interrogatory. "I do not remember the exact date, but it was between the 1st day of January, 1891, and the time the suit was brought. I had received the information about the insurance for several months prior to the bringing of the suit and up to the time the suit was brought."

TESTIMONY OF L. LANIER, ADMITTING HAVING REQUESTED ROBINSON, TRUSTEE, TO BRING SUIT.

To 16th Cross-Interrogatory, L. Lanier answers: "Yes, I wrote him (Robinson), requesting him to take action in the matter, signed only by myself; it was mailed to him and I have not seen it since; can't say who began the project; it was the desire of nearly all the holders of the bonds as expressed to me.

EXTRACT FROM ANSWER OF THE HUGULEY MFG. CO. TO BILL OF COMPLAINT.

"Said Laniers are interested in a rival cotton mill on the same river, about two and a half miles above this mill, and these defendants think said Laniers are much more interested in crippling the Huguley Manufacturing Company than in collecting said coupons or bonds."

EXTRACT FROM THE TESTIMONY OF JOHN C. ORRICK, ATTORNEY AND WITNESS FOR THE HUGULEY MANUFACTURING COMPANY.

To Cross-Interrogatory 2, he answers: "I was the regular attorney for the Huguley Manufacturing Company from the time it was organized. * * *

"I know that Mr. Lanier was the chief instigator among the bondholders of the foreclosure proceedings; that the Huguley Manufacturing Company had deposited the interest money at the bank at Atlanta, Ga., and that he, with others, wrongfully refused to accept the money in payment of their coupons due at that time; that Lanier was interested in breaking down the Huguley Manufacturing Company, as it was a competitor of a mill which he managed a few miles off. So, through the action of Lanier and others, the Huguley Manufacturing Company had to run its mill with this foreclosure proceeding pending brought on by Lanier and other bondholders."

35. The decree of March 30, 1895, on which all subsequent proceedings in this case are based, required the payment of the entire mortgage debt, and all the interest coupons that had not been paid and accepted before the date of the filing of the bill on "ninety bonds" for the total sum of $45,000.00 principal, and $17,005.92 interest, which included interest on the coupons from the day they fell due, *on their face*, and ordered the sale of the entire property, unless these sums were paid within 30 days from the date of the decree, with interest at 8 per cent. per annum on those sums, from November 1, 1894, until paid, that being the date up to which the master had computed the sum of the principal of the debt, and the unpaid coupons thereon, with interest on the coupons; thus compounding the interest on the coupons, and giving interest on the principal debt to the amount of $45,000.00 from the first of November, 1894.

This part of the decree, Section 9, was manifest error under the decision in Fosdick's case, 106 U. S. Reports, page 75, and that error alone rendered nugatory all subsequent proceedings based upon it.

And that part of the decree is repugnant to Section 1 of the same decree in which "the court finds that default was made in the payment of the interest on all the bonds issued by the Alabama and Georgia Manufacturing Company," and this finding is not supported by the evidence in the case.

And Section 9 of the decree is in conflict with Section 7, which declares that the bonds described by numbers in Section 2 of the decree, "were NOT due at the time of the filing of this suit, and said plaintiff trustee is NOT entitled to recover therefor."

This finding and decree in Section 7 necessarily dismisses the bill as to the 40 bonds described in Section 2 of the decree, since no party to the record was "entitled to recover therefor," and those bondholders who are named in the decree, but not named or in any way identified in the bill, were left without the benevolent care of Robinson, trustee, exposed to the rapacity of Lanier, his director in the litigation.

Some of the debts, to the amount of $20,000.00, which "were NOT due at the time of the filing of this suit, had their mortgage lien removed from the property by the decree of sale and transferred to the proceeds to be paid into court on distribution, in amounts according to the findings of the special master." Those findings were made under decrees that were entered in a cause in which the alleged trustee was "not entitled to recover" on any bond or coupon held

hem. They can accept the terms offered in Section 11 of the ee, or "forever after hold their peace." This is a rude reversal ordick's case, it must be admitted.

hen the court reached Section 8 of its decree, it swept back to late of the deed, January, 1884, and barred the equity of re- ption of the Alabama and Georgia Manufacturing Company, any one claiming under or through it since the date of the exe- n of said trust deed."

he bill in this case asks no such relief as relates *back to the date he deed.*

ie bill asks that said corporation, "and any and all persons ning under it, be absolutely and forever foreclosed of and from equity of redemption in and to said mortgaged premises and y part thereof," fixing no date when such foreclosure should effect.

osdick's case declares that the equity of redemption is a favorite court of equity. There are few, if any cases, in which that ly regard is manifested by limiting the life of such a favorite 0 days.

Non constat the bondholders who were excluded from the benefits suit which the trustee claimed was "for their best interests," ht, within a reasonable time, have preferred to pay those who e let into its benefits, thereby keeping the title in the trustee to ect their investment rather than to have their rights transferred n the lien on the property to a share in the proceeds of the perty under a sale to Lanier, at a loss to them of 35 per cent of r bonds. But they claim under the Alabama and Georgia Man cturing Company, back to the date of the deed in trust and they cut off by this decree of foreclosure, from all else but the ilege of participating in the proceeds of this sale, which dis- inates against them as purchasers, who can buy the prop- with bonds.

But this sweeping decree, which has no proof to support it, and issue tendered in the bill on which its legality could be tested, no fact stated in the bill to support it, was intended to forever the Huguley Manufacturing Company, in any court, in any te, from claiming rents and profits from Lanier and his associ- s in the Galeton Cotton Mills.

The Huguley Manufacturing Company had purchased the posses- n of this property and all the rights of the Alabama and Georgia nufacturing Company in it, under the decree of the Chancery urt of Troup county, Georgia, subject to the prior lien of the d of trust which is the foundation of this suit, and Robinson, as

a director of said company, was a party to that suit, and was conclusively bound by the decree rendered by that court.

They were holding possession under that decree, as is stated in the bill, and were not claiming adversely to the decree or the deed of trust. No complaint is made in the bill that they were holding the property adversely to Robinson, trustee. Their possession was lawful, peaceable, and friendly to the trust deed and its beneficiaries.

No receiver was appointed in this case, and no attempt was made to oust them of the possession until Lanier bought the property in September, 1892, when he was put into possession by the court. That decree was reversed. A sale of the property was again made in May, 1896, at which Lanier again became the purchaser; but the sale not finally confirmed and the deed ordered to be made until October 15, 1898.

In Fosdick's case, on page 71, the court say: "But in cases of strict foreclosure, so in cases of sale, the equity of the mortgagee is not exhausted until the sale actually confirmed; for if at any time prior he should bring into court for the mortgagee, the amount of the debt, interests, and costs, he will be allowed to redeem.

"It is the deed made to the purchaser, actually transferring the title of the parties to the suit, that terminates the mortgagor's equity of redemption," citing Brine *v.* Insurance Company, 96 U. S. 627.

The Huguley Manufacturing Company, by the decree of the court in Georgia, stood in the shoes of the Alabama and Georgia Manufacturing Company as to every right to pay off the mortgage debt, and as to the right of possession, *lis pendens*.

It was to bar this right and to legalize the possession of the Galeton Cotton Mills under a decree that had been *reversed*, that this sweeping decree of foreclosure was made.

The circuit court held, under these circumstances, that the Galeton Cotton Mills was a mortgagee in possession under the decree which had been *reversed*, and that the Huguley Manufacturing Company was not entitled to the rents and profits up to May, 1896, when the property was again sold, and that Lanier, or the Galeton Cotton Mills, was not liable for rents from that date until October 15, 1898, when a deed was made to him *individually* on a purchase he made in May, 1896, during all of which period he held the possession of the property.

It seems inevitable that Fosdick's case must be overruled before Lanier or the Galeton Cotton Mills, is to have the character or the rights of a mortgagee in possession.

JOHN T. MORGAN,
Attorney for Appellants.

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 94.

THE HUGULEY MANUFACTURING COMPANY, WILLIAM T. HUGULEY, AND THE ALABAMA AND GEORGIA MANUFACTURING COMPANY

vs.

THE GALETON COTTON MILLS, J. J. ROBINSON, TRUSTEE, AND L. LANIER.

In this case the undersigned, attorney for the appellants, begs leave to bring to the attention of the court, in connection with the first assignment of error, the case of Thompson *vs.* Wooster, 114 U. S. Reports, 104.

This case is cited by appellants on page 8 of their "brief in reply to the brief and argument of appellees on the motions for certiorari and to dismiss the appeal" filed in this case.

It was intended to cite this case again in the brief and argument of appellants on the merits of the case, but it was accidentally omitted.

The bearing of this case on the case at bar is in that pa
of the opinion of the court on page 113, as follows:

"It is thus seen that by our practice a *decree pro confe*
is not a decree as of course according to the prayer of t
bill, nor merely such as the complainant chooses to take
but that it is made (or should be made) *by the court, acco*
ing to what is proper to be decreed upon the statements of t
bill, assumed to be true."

No decree *pro confesso* was entered or considered by t
court at any time, and no valid decree was entered in t
cause on the issues of fact presented in the pleadings un
March 30, 1895, the decree rendered prior to that date fo
closing the mortgage having been reversed on appeal. T
decree of March 30, 1895, makes no reference to a *decree p*
confesso against W. T. Huguley, defendant.

The court further say: "Our rules do not require the cau
to be set down for hearing at a regular term, but, after t
entry of the order to take the bill *pro confesso*, the 18th ru
declares that thereupon the cause shall be proceeded
ex parte, and *the matter of the bill may be decreed by the co*
at any time after the expiration of thirty days from t
entry of such order, if it can be done without answer *and*
proper to be decreed. This language shows that the matt
of the bill ought at least to be opened and explained to t
court when the decree is applied for, so that the court ma
see that the decree is a proper one. The binding charact
of the decree, as declared in rule 17, renders it proper tha
this degree of precaution should be taken."

No such decree has been made by a court in this case,
even asked for, against defendant William T. Huguley, an
if any such decree is ever made in this case, it will be mad

by the Supreme Court, or by the circuit court under its mandate.

The decree *pro confesso* entered by complainants' counsel was merely interlocutory, and while it was proper to be made upon statements and averments as loose and indefinite as those in this bill, it only authorized proceedings *ex parte* in the cause. It did not become a final decree against Huguley until it had been "opened and explained to the court" when the decree of foreclosure was "applied for."

Such being the case, some court must ascertain and decree that the decree *pro confesso* entered on the order book "*was proper to be made.*" If the bill contained no equity on its face, or if the subject-matter of the suit or the action of the court is not within the jurisdiction of the court, Huguley has the right to raise that question in the case whenever, in any form, a court shall make that decree final.

Can a decree *pro confesso* be properly made by any court when the court has not the jurisdiction of the subject-matter of the suit or the jurisdiction to grant the prayer in the bill? In this case the circuit court had no more power under the Constitution and laws of the United States, which created the circuit court, to grant the prayer of the bill than if the prayer had been that the defendants should be imprisoned until they paid the money judgment rendered against them, and Huguley has the right to raise that question in the Supreme Court, where he is not in default, against the validity of these proceedings.

Huguley was evidently made a party defendant as trustee only to save the question of jurisdiction of the court on the ground of diverse citizenship. No *act* is charged against him that required an answer. His personal inter-

ests, so far as they are stated in the bill, were only in connection with his interests in the Huguley Manufacturing Company, which is a defendant and filed its answer in the case.

He was not recalcitrant or in voluntary or intentional contempt. He was made a defendant only because he could not be made a complainant without ousting the jurisdiction. A position of neutrality, as trustee, was assigned to him in the bill, and he left Robinson to take his own course, and Robinson has done so, led by Lanier, until he has destroyed the whole value of the trust that it was his duty to protect. He has no claim to equitable indulgence.

The powers of the circuit courts of the United States are all derived from the Constitution and laws of the United States, and any proceeding in said courts or any decree rendered by them presents a Federal question that no State court can conclusively determine if it includes the question of the power of the court to render such a decree or to entertain jurisdiction of such proceedings.

Such questions are not only Federal, but they are exclusively Federal, *because they partake of and rest upon the supremacy of the Federal judicial power.*

In the briefs of Messrs. Farrar and Chilton, on file, on the petition for a certiorari in this case there is a very able presentation of the principles and authorities that support the views of the appellants.

JOHN T. MORGAN,
Attorney for Appellants.

No. 94.

Supreme Court of the United States.

OCTOBER TERM, 1901.

Office Supreme Court U.S.
FILED
JAN 18 1902
JAMES H. McKENNEY,
Clerk.

THE HUGULEY MANUFACTURING COMPANY, THE ALABAMA AND GEORGIA MANUFACTURING COMPANY, AND WILLIAM T. HUGULEY,

Appellants,

versus

THE GALETON COTTON MILLS, J. J. ROBINSON, TRUSTEE, AND L. LANIER, *Appellees.*

Argument and Brief on the Merits of the Case.

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Of Counsel.

WASHINGTON, D. C.:
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1902.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 94.

THE HUGULEY MANUFACTURING COMPANY, THE ALABAMA AND GEORGIA MANUFACTURING COMPANY, AND WILLIAM T. HUGULEY, *Appellants*,

versus

THE GALETON COTTON MILLS, J. J. ROBINSON, TRUSTEE, AND L. LANIER, *Appellees*.

ARGUMENT AND BRIEF ON THE MERITS OF THE CASE BY McLAURIN & WELLES AND KING & SPALDING AND JOHN M. CHILTON, FOR APPELLANTS.

J. J. Robinson, a citizen of Alabama, and William T. Huguley, a citizen of Georgia, were the survivors of three trustees of a deed of trust executed by the Alabama and Georgia Manufacturing Company to secure an issue of bonds.

At the time of the execution of said deed and the creation of said trust, said Huguley was the mortgagor's vice-president and secretary, W. H. Huguley, president; and said Robinson, who was a director, was aware of W. T. Huguley's official relations at the time he accepted the trust.

Subsequently the Huguley Manufacturing Company purchased the mortgaged property at a judicial sale of the Georgia State Court under a decree against said mortgagor, said sale being made subject to said deed of trust, and the deed executed to said Huguley Manufacturing Company being expressed to be so subject.

The bonds secured by said trust deed required the payment of interest semi-annually, on the first days of January and July in each year. A default for six (6) months in payment of any interest installment matured the principal of the bonds, but expressly con-

ditional *upon a previous presentment and demand "at the office of the company in West Point, Georgia," and notice of non payment served on the president of the company, and the delay or refusal of payment for six months after such notice.*

A default was claimed in paying the interest due July 1, 1890. A remittance was started from St. Louis on the 29th day of December, 1890, to pay said interest, but a delay in opening the mail by the bank to which it was addressed, and the first of January being a legal holiday, caused the remittance for interest to be opened at the counter of the Atlanta National Bank, which had become, by consent of bondholders, the substituted place of payment, on January 2, 1891. The holders of a number of bonds, $22,000 in amount, however, accepted the interest and waived the default, leaving forty-three thousand dollars ($43,000) which were claimed to have matured as to the principal.

On the 21st day of January, 1891, J. J. Robinson (W. C. Yancey, a trustee, had previously died, and no successor had been chosen), as trustee, filed his bill of complaint against the Alabama and Georgia Manufacturing Company and the Huguley Manufacturing Company, also joining William T. Huguley as a party defendant, alleging that by reason of interest in the Huguley Manufacturing Company his interest was adverse to the holders of the bonds and that he should not be allowed to act as trustee or become a plaintiff in said suit. No relief was asked against Huguley, no averment was made of any demand on Huguley to foreclose, or of any refusal on his part to act.

The bill averred Robinson to be a citizen of Alabama. The defendants, including Huguley, were all alleged to be citizens of Georgia.

Had Huguley been joined as a complainant, or if he is to be arrayed on the plaintiff's side of the controversy, the controversy is not between citizens of different States.

The bill alleged that two corporations were chartered by the State of Georgia, known respectively as the Alabama and Georgia Manufacturing Company and the Huguley Manufacturing Company, but was silent upon the point that the two corporations were chartered by the State of Alabama, of the same respective names, and that the *Alabama* corporations were each first so chartered and organized.

There was no consolidation of these corporations and none was shown.

Had either of these Alabama corporations been made defendants —being of the same State with complainant, Robinson,—the Circuit

Court of the United States would have had no jurisdiction of the cause.

The cause finally ripened into a decree foreclosing the trust deed and adjudging all of the bonds due and payable when only forty-five thousand ($45,000) dollars were decreed to be so due and payable.

The property was sold under this decree, which on appeal was reversed, and the sale decreed to be null and void. The purchase was by a committee representing all of the bondholders.

The defendant Huguley Manufacturing Company prayed for a writ of restitution, and the court required of it the payment of ten thousand ($10,000) dollars, claimed to have been paid "into court" in cash on said sale, as a condition precedent therefor, and that sum not being paid because no part of it was due or taxable against the Huguley Manufacturing Company, as evidenced by the court itself ultimately taxing it "*as between the bondholders themselves*," the court passed a new decree finding forty-five thousand ($45,000) dollars of the bonds due and payable, and directing a re-sale of the property to satisfy the mortgage debt. This was done pending an accounting to ascertain what sum for profits the purchaser, *who was the mortgagee in possession*, had received *pendente lite*.

By this decree the mortgage was foreclosed, and the payment to prevent foreclosure demanded of the *entire* sum of the defaulted bonds and interest thereon, when this sum should first have been reduced by the rents and profits of the mortgaged estate which had been received by the trustee as a mortgagee in possession.

This decree of sale was rendered March 30, 1895. It was not executed by a sale until the first Tuesday in May, 1896. In the meantime the charter of the Alabama and Georgia Manufacturing Company of Georgia (which was the only party of the name to the cause, and which alone had been called on by the decree to pay the debt or stand foreclosed) had expired by its limitation of thirty (30) years.

The property was bought in at the second sale by L. Lanier, as agent or trustee *for the bondholders*.

This sale was confirmed, *conditionally*, on June 25, 1896, and at that time a reference again made to ascertain the rents and profits for which the former purchasers must account. This was subsequently ascertained to be thirty-five thousand eight hundred seventeen and fifty-four one hundredths ($35,817.54) dollars.

The new purchaser *did not comply with his bid* as confirmed, and it was not until October 15, 1898, *two years, five months and nine*

days after the bid, that any pretense of compliance was made, whereupon, *after changing not only the terms but changing the parties*, the Circuit Court confirmed the sale and directed a deed made —not to the *bondholders* in whose name the property had been knocked down and the sale reported, but to *L. Lanier, individually*, and deed made thereunder.

The former purchasers, whose possession was not, and could not have been disturbed, and who held alone as a mortgagee in possession under the former order of the court, never accounted for the rents and issues from either September 6, 1892, up to May 6, 1896, or from the latter date up to the date of final confirmation on October 15, 1898.

Such rents would far more than have extinguished the mortgage debts and left the second purchaser in the position of one who for over two (2) years and five months had, without order of court, failed to comply with his bid, and who was therefore not entitled to these rents. And at the time he offered to comply and asked a change in the terms of confirmation, these additional rents and issues would alone far more than have extinguished the mortgaged debt.

Without in any way waiving the points discussed and urged in this cause by other counsel in other briefs, to which the attention of the court is respectfully invited, we submit the following suggestions on a few salient points.

I.

If the Supreme Court had no jurisdiction on appeal, it now has full jurisdiction under the writ of CERTIORARI *by which the record was brought before the court.*

It is claimed by the appellees in this case that the Supreme Court of the United States has no jurisdiction for the reason that it is a case involving jurisdictionally only the question of diverse citizenship, and that therefore, the judgment of the Circuit Court of Appeals is final under the statute of 1891, which provides "and the judgments and decrees of the circuit courts of appeals shall be final in all cases in which the jurisdiction is dependent entirely upon the opposite parties to the suit or controversy being aliens and citizens of the United States or citizens of different States."

They overlook the further provision of the statute, which reads: "And *excepting always* that, in any such case as is hereinbefore

made final in the Circuit Court of Appeals, it shall be competent for the Supreme Court to require, by *certiorari or otherwise*, any such case to be certified to the Supreme Court *for its review and determination with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court.*"

Admitting then, for the sake of argument, that an appeal could not properly lie, the Supreme Court has full jurisdiction over this case, as the record is now here, not under the appeal, but under a writ of *certiorari* granted by the Supreme Court, and the statute is explicit that the Supreme Court has full jurisdiction over it.

The proceedings attacked in this application have been continuous, were finally closed by the decree of the Circuit Court of Appeals by its judgment and decree of May 16, 1899, and are all contained in the record brought up.

Under the principles declared by this court in the case of the Panama Railroad Company *v.* Napier Shipping Company, 166 U. S., p. 280, the writ brings up the whole case for examination.

In that case the Circuit Court of Appeals, in February, 1892, on an appeal from the Circuit Court, reversed its decree below and entered a decree in favor of the Napier Shipping Company, declaring the Panama Railroad Company liable, and remanded the case to ascertain the damages. The District Court found the damages and entered a decree therefor. On the second appeal taken by the Panama Railroad Company, the Circuit Court of Appeals, in April, 1894, affirmed the judgment of the District Court.

On *certiorari* thereafter taken this court held that "while the Court of Appeals may have been limited on the second appeal to questions arising upon the amount of damages, no such limitation applies to this court, when in the exercise of its supervisory jurisdiction it issues a writ of *certiorari* to bring up the whole record. Upon such writ the entire case is before us for examination."

The judgment of this court reversed all the decrees on the record against the Panama Railroad and reinstated the original decree of the District Court in its favor, entered in July, 1891.

In Amer. Construction Co. *v.* Jacksonville, Tampa and K. W. Ry. Co., and Same *v.* Penn. Co., for granting annuities, insurances on lives, &c. (decided March 27, 1893), 148 U. S. 372, it is said (summing up):

"The effect of these provisions is that, 'under the act of Congress of March 3, 1891,' in any case in which the jurisdiction of the Cir-

cuit Court depends entirely on the citizenship of the parties (as in the cases now before us), and in which the jurisdiction of that court is not in issue, the appeal given from its judgments and decrees, whether final or interlocutory, lies to the Circuit Court of Appeals only; and the judgments of the latter court are final, unless either that court certifies questions or propositions of law to this court, or *else* this court, *by certiorari or otherwise, orders the whole case to be sent up for its review and determination.*"

McLish *v.* Roff, 141 U. S. 66, 35: 893.

See also *in re* Chetwood, 165 U. S. 443, 462.

"An appeal from a final decree in equity brings up all questions which were decided against the appellant."

Buckingham *v.* McLean, 13 How. 150, 14: 90.

The statute was intended to relieve the Supreme Court of the burdens of those cases where grave questions were not involved, but of which it had jurisdiction by reason of diverse citizenship, saving jurisdiction in other matters expressly and giving the Supreme Court authority to take jurisdiction by *certiorari* or otherwise of any excepted case of such importance as to justify review. It gives the Supreme Court an option as to whether or not to hear such cases. It exercises this option in passing upon the removal of the cause from the Circuit Court of Appeals to the Supreme Court. In this case *the option has been exercised*, and whatever might be the differences of opinion as to jurisdiction under the appeal there is no question that the Supreme Court *has already acquired and accepted jurisdiction under the writ of certiorari, and it has as plenary powers and duties as though this case did not fall in the excepted class.*

We contend, however, that this case does not fall within the excepted class. If no *other* jurisdictional question was involved than that of diverse citizenship, or if a Federal question arose in the case during its progress that was not in the case as originally filed, it might possibly come within the statute so far as the original appeal is concerned, but in this case the question was one of jurisdiction of the *subject matter*, inherent in the case, rendering it *void* when filed, *void* at every step, a *nullity* to be treated as such at whatever stage the defect was discovered. It involved property—lands on which is located a cotton duck mill plant and village—situated wholly *outside of the State* in which the court had jurisdiction, and as to the property within the State, consisting of a few detached, isolated islands, it was in the hands of a receiver appointed by a State court. The fact that the question was not raised at all points of the pro-

ceedings has nothing to do with it. The question of jurisdiction is one that every court in which a case comes is bound to inquire. Jurisdiction cannot be conferred by consent or by agreement, and it certainly cannot be created by negligence of counsel in not filing demurrers.

[See also in this connection the brief of our colleague, Hon. John T. Morgan, leading counsel, on application for *certiorari*, pp. 46–55, and see his last brief filed on same petition, particularly on pages 22–41 (Green cover).]

II.

The question of jurisdiction of the controversy lies at the root of every litigation in a Federal court. The court will inquire on its own behalf, and where jurisdiction has been wrongfully assumed will reverse the cause with directions to dismiss the entire proceeding.

"The rule is inflexible and without exception, as was said, upon full consideration, in *Mansfield, Coldwater, &c., Railway* v. *Swan*, 111 U. S. 379, 382, 'which requires this court, of its own motion, to deny its own jurisdiction, and, in the exercise of its appellate power, that of all other courts of the United States, in all cases where such jurisdiction does not affirmatively appear in the record on which, in the exercise of that power, it is called to act. On every writ of error or appeal, the first and fundamental question is that of jurisdiction, first of this court, and then of the court from which the record comes. This question the court is bound to ask and answer for itself, even when not otherwise suggested, and without respect to the relations of the parties to it.' To the same effect are *King Bridge Co.* v. *Otoe County*, 120 U. S. 225; *Grace* v. *American Central Insurance Co.*, 109 U. S. 278, 283; *Blacklock* v. *Small*, 127 U. S. 96, 105, and other cases."

Morris v. *Gilmer*, 129 U. S. 315, 325, 326.

In Morris *v.* Gilmer, 129 U. S. 325, this court said:

"But if the record disclose a controversy of which the court cannot properly take cognizance, its duty is to proceed no farther, and to dismiss the suit, and its failure or refusal to do what, under the law applicable to the facts proved, it ought to do, is an error which this court, upon its own motion, will correct when the case is brought here for review. The rule is inflexible, and without exception, as was said, upon full consideration, in Mansfield, etc., Ry. Co. *v.* Swan, 111 U. S. 382."

And the court goes on and quotes *verbatim* the extract above made from that case, saying:

"It is an inflexible rule that the judicial power of the United States must not be exerted in a case to which it does not extend, even though both parties desire to have it exerted."

The language of Mr. Justice Curtis, in Dred Scott Case, 19 How. 566, cited and adopted.

In Parker *v.* Ormsby, 141 U. S. 83, Mr. Justice Harlan said:

"Did the court below have jurisdiction of this case? If jurisdiction did not affirmatively appear upon the record, it was error to have rendered a decree, whether the question of jurisdiction was raised or not in the court below. In the exercise of its power this court, of its own motion, must deny the jurisdiction of the courts of the United States, in all cases coming before it, upon writ of error or appeal, where such jurisdiction does not affirmatively appear in the record on which it is called to act."

Mansfield, etc., Ry. Co. *v.* Swan, 111 U. S. 382, 379.
King Bridge Co. *v.* Otoe County, 120 U. S. 225, 226.
Cameron *v.* Hodges, 127 U. S. 322, 325.
Colorado C. Min. Co. *v.* Turck, 150 U. S. 138, 37: 1030.

"On a writ of error or appeal, where the case comes from a Federal court, the first and fundamental question is that of 'jurisdiction,' first of the United States Supreme Court and then of the court below."

King Iron Bridge & Mfg. Co. *v.* Otoe County, 120 U. S. 225.

In Vannerson *v.* Leverett, 31 Fed. 376-8, Judge Speer held:

"The Circuit Court of the United States is limited in its jurisdiction, and, when it does not obtain, it is an inflexible rule that the judicial power of the United States must not be exerted, even if both parties desire to have it exerted."

Railroad Co. *v.* Swan, 111 U. S. 379, 4 Sup. Ct. Rep. 510;
Cross *v.* DeValle, 1 Wall. 5.

"A judgment of a court without jurisdiction is a *nullity*, and where the failure of the jurisdiction is alleged in the courts of the United States it is never too late for the court to consider the evidence pertinent thereto. Indeed, Congress, by imperative statute, has made this obligatory. If at any time the want of jurisdiction should appear, it is the duty of the court to dismiss the case. Then surely at any time it is the privilege of the party to make it appear, if he can, nor in this case does it waive the absence of jurisdiction to file an answer. The limited jurisdiction of the courts of the United States cannot be enlarged by the action of the parties litigant therein, and, if the want of jurisdiction at any time appears, the court *sua sponte*, will raise the question, whether the parties do or do not.

"The question of jurisdiction of the *subject-matter* may arise in the court in which the action is pending or on appeal, or by action in another court to set aside the judgment, or it may arise in the court in which the proceedings were had, or in some other court. Where the attack is direct, the question whether the court is one of general or of inferior jurisdiction is immaterial. *The question of jurisdiction of the subject-matter may be raised directly, either in the trial court or on appeal, at any stage of the proceedings.*"

Works on Courts and their Jurisdiction, p. 118, citing:
Doctor *v.* Hartman, 74 Ind. 221, 228.
Cooley's Const. Lim., p. 398.

"The question of the jurisdiction of the lower court of the *subject-matter is open to objection in the appellate court for the first time.*"

Works on Courts and their Jurisdiction, p. 118, citing:
Peyser *v.* Murray, 6 Ind. 35.
Doctor *v.* Hartman, 74 Ind. 221.

III.

The record in this case showing on its face that, with the exception of a few islands stated to be in Georgia, the entire property, "including the cotton mill and all the machinery therein or thereto belonging, and all water privileges and riparian rights, etc.," are plainly described as "lying and being in Chambers county, State of Alabama," the Circuit Court of the United States for the Northern District of Georgia was without jurisdiction to entertain so much of the bill filed in this cause as sought to foreclose the mortgage set up against said property, situated in Chambers county, in the State of Alabama, without jurisdiction to decree the sale thereof to be made by its commissioner in the State of Georgia, and without jurisdiction to confirm the sale so made.

This mortgage recites that a part of the property, consisting of certain isolated and detached islands as plainly described, were situated in the State of Georgia, while it then goes on to recite:

"Also, a tract or parcel of land, lying on the *west* side of the Chattahoochee river, *opposite* the above-described islands, bounded on the *east* by said river, beginning at a point on the *west* bank of said river, nearly *opposite* the center of the seven-acre island * * * containing sixty-five and 23 100 (65.23) acres, more or less, *lying and being in Chambers county, State of Alabama*, and being a part of section, etc., * * * *including all tenements and improvements, including the cotton mill and machinery therein or thereto belonging*, and all water privileges and riparian rights now or here-

after owned or enjoyed by said Alabama and Georgia Manufacturing Company."

Part I, pp. 6–7.

From the face of this description in the mortgage, therefore, it is seen that barring the few islands named, this entire cotton mill plant, lands, factory village, tenements, etc., etc., are situated *wholly* whithin the State of *Alabama*. Appellees admit this to be the fact.

It likewise is shown, on the face of the record, that these islands lying "*opposite*" and on the *other* side of the river, are entirely divorced and separated from *all* the remainder of the said lands and cotton mill plant in Alabama, and consequently that portion of said property *claimed* to be in Georgia, on the one hand, and all the remainder of the property so stated to be in Alabama, are, as matter of fact, plainly "*divisible*" or isolated, the one from the other.

In recognition of the fact that this entire cotton mill plant and village, etc., lie wholly within the State of Alabama, charter for the "Galeton Cotton Mills" was procured and the company was organized solely in *Alabama* and not elsewhere.

Part II, pp. 224–7.

"It is an elementary principle of jurisdiction that a court sitting in one State, whether State or Federal, cannot foreclose a mortgage on and decree a sale of land situated in another State." * * * "The courts of one State can have no jurisdiction over persons or property without its territorial limits, and any exertion of their authority beyond those limits would be deemed an illegitimate assumption of power, and be resisted as mere abuse."

Watkins *v.* Holman, 16 Pet. 26.
Boyce *v.* Grundy, 9 Pet. 275.
Northern Indiana R. Co. *v.* Mich. Cent. R. Co., 15 How. 233.
Watts *v.* Waddle, 6 Pet. 389.
Jones on Mortgages, Sec. 1444.
Farmers' L. & T. Co. *v.* Postal Tel. Co., 55 Conn. 334.
Lynde *v.* Columbus C. R. Co., 57 Fed. 993.
Black on Judgments, Vol. 2, Sec. 872.
Rorer on Interstate Law (2d ed.), Ch. XXI, 284 (N. 1), and cases cited.

In Davis *v.* Headley, 7 C. E. Green, 115, the learned Chancellor Zabriskie declared:

"It was a well settled principle of law in the decisions of England and of this country, and acquiesced in by the jurists of all civilized nations, that immovable property is exclusively subject to the laws

and jurisdiction of the courts of the State or nation in which it is located, and that no other laws or courts could affect it.

"The jurisdiction of courts over land is local. Neither State nor Federal courts can reach or confer title, nor sell under a decree those which are situated in a different State from that in which the court sits."

Boyce *v.* Grundy, 9 Pet. 275 *supra.*
Watkins *v.* Holman, 16 Pet. 16.

"And so in the district as to United States Circuit Courts."

Northern Indiana R.R. Co. *v.* Mich. Cent. R.R. Co., 15 How. 233.
Watts *v.* Waddle, 6 Pet. 400.
Rorer on Interstate Law (2d ed.), Ch. XXI, 284 (N. 1), and cases cited thereunder.

"And where a sale is made by virtue of an execution from the United States Court, the State law directing the place of sale governs."

12 Plead. & Pract., 41, citing:
Smith *v.* Cockrell, 6 Wall. 756.
Wayman *v.* Southard, 10 Wheat. 1, and other cases cited.

By statutory enactment in nearly all the States all sales of realty must be held *at the court-house in the county in which the property is situated.*

12 Ency. Plead. & Pract., citing:
Anniston Pipe Works *v.* Williams, 106 Ala. 334.
Longworthy *v.* Featherstone, 65 Ga. 165,

and numerous other cases cited from other States.

IV.

Replying to Contention of Opposing Counsel and Their Reliance Upon Effectiveness of a Decree in personam—Necessity of Ancillary and Auxiliary Bills, in Order to Subject Property Lying in Another State.

Notwithstanding the foregoing unbroken line of authorities, which have been finally crystallized into *horn book law*, and "acquiesced in by the jurists of all civilized nations," as Chancellor Zabriskie well says, it is averred by counsel that said property is indivisible and, therefore, not affected by either State or county lines. If this property has destroyed the divisibility of the States of Alabama and of Georgia, it is certainly greatly to be regretted.

There is no such law as that of the divisibility of property. No text-writer upon the law of real estate or of sales of real property has ever treated upon the subject. Neither Bouvier nor Rapalje's Dictionary of Law gives any definition of the word "divisibility," or of the word "indivisibility," and no digest has such a title. There is a principle in equity and in probate that, where land cannot be divided without injuring the rights of minors, tenants-in-common, or other wards of chancery, or of probate, it will be sold as a whole and not in parcels. But invariably in such cases, where land is situated in different counties and in different States, supplementary ancillary or rather auxiliary proceedings are imperatively required.

There is also a question which arises as to the divisibility of railroad franchises, where railroad corporations have been consolidated by legislative enactment specially providing for the consolidation of said corporation and their franchises into a third corporation in the parent State which creates the original corporation. Where such a consolidated railroad is the owner of a bridge across a navigable stream, which forms the boundary line between two States or countries, the jurisdiction over such stream resting in the Federal Government, and the bridge having to be built under a special act of Congress, such a bridge is exclusively within the jurisdiction of a Federal court, and as to destroy the abutments over which alone the States could exercise jurisdiction would be to destroy the bridge, and the abutments being but incidental to the bridge, the Federal court will treat the property as lying within the Federal jurisdiction. So also courts have held in some States that rolling-stock is real estate. We have the anomaly, therefore, of real estate situated in different States sold on the same day. These decisions are rendered necessary by the peculiar character of railroad property, and apply to no other property. If foreclosure sales were required in all the States they would have to be held at identically the same moment in each State, and evidence would have to be taken as to the exact location of each portion of the rolling-stock at the precise moment of the sale. Even then some train might be crossing a State line at a given moment and not be sold by any State, as it would be impossible to tell precisely how many cars of a moving train are in each State. The Supreme Court of the United States allowed a Federal court to make a sale of the entire property of a railroad corporation, with property in different States, upon the ground of the necessities of the particular case, but even then re-

quired the trustees under the mortgage, who were before the court, to execute the deed.

Muller *v.* Dows, 94 U. S. 449.

The United States Circuit Court of Appeals, in reviewing this authority, on the circuits, have expressly and uniformly held that the master commissioner had no jurisdiction beyond the State line, as he was merely process, and that the validity of the sale rested upon the deed of the trustees, having the effect of a decree *in personam*. This also is the view which every court has adopted in considering this decision, not only on the circuit but including the repeated ratifications, in later decisions, by the Supreme Court of the United States itself.

Railroad corporations, as *quasi* public corporations, have privileges and responsibilities not possessed by purely private corporations. The sovereign power of eminent domain vests in railroad corporations by reason of their public nature, even though it was argued by some of the ablest lawyers and held by some of the best courts, in the early days of railroad enterprises, that eminent domain, being an attribute of sovereignty, could not be delegated. It is now universally agreed that it can be so delegated, but the reason is only found in the fact of the public nature of these corporations.

In Mercantile Trust Co. *v.* Kanawha and Ohio Ry. Co., 39 Fed. 337, Mr. Justice Harlan, after reviewing exhaustively the facts, concluded in the following strong words:

"It might be well if Congress would so enlarge and regulate the jurisdiction of the courts of the United States as to enable a circuit court, in which is brought an original suit for the foreclosure of a mortgage resting upon an interstate railroad, to take actual possession by its officers of the entire line, and of all the mortgaged property, wherever situated, and administer it for all concerned; preserving in that mode the unity of the road, and the just rights of mortgagor, mortgagees, and creditors, as well as those of the general public interested in commerce among the States. *But there has been no such legislation, and we do not see our way clear to effect any such result by judicial orders merely.*"

The rule recognizing the absolute regularity and necessity for the filing of ancillary and auxiliary bills in order to reach and subject property—especially railroad property—lying in other States, has been carefully laid down, under petition from the circuit by Justices Field, Harlan, Brewer and Brown, in the important case of

the Farmers' Loan and Trust Co. *v.* Northern Pacific Railroad Co., 69 Fed. 871, and 72 Fed. 26.

To same effect, see:

Dillon *v.* Oregon S. L. and U. N. Ry. Co., 66 Fed. 622, and cases cited.

Central Trust Co. *v.* Wabash, St. Louis and P. Ry. Co., 29 Fed. 620.

Reynolds *v.* Stockton, 140 U. S. 254, 272.

Wilmer *v.* Atlanta and Richmond Air Line Ry. Co., 2 Woods, 447; 30 Fed. cases No. 17,776.

A very thorough illustration of the proper course to be pursued, where property is in two States, will be found in the case of Wilmer *v.* Atlanta and Richmond Air Line Railway Company. In that case the existence of the two companies of different States was recognized, and the two companies appeared and were made parties. Furthermore, in regard to the property outside of the State, the court expressly say:

"We are not asked to foreclose the mortgage. We are not asked to confer on the trustees any power they do not already possess, but simply to tell them what are their powers under their deed."

The court also say: "The complainants may be required to file ancillary bills in other States," and the decree was that the trustees were directed to sell the road at Atlanta, Georgia.

Wilmer *v.* Atlanta and Richmond Air Line Railway Co., 2 Woods, 447, 455, 456, and 457.

In all railroad foreclosures recently had in the jurisdiction of the Circuit Court of the United States for the Northern District of Georgia, ancillary bills were filed in every State through which the roads ran; decrees were taken on each of these ancillary bills, and the mortgagor railroad companies were required to execute deeds, as well as the Master Commissioner, and the purchaser was given the right to demand a deed from the trustee foreclosing the mortgage.

This was true in the Central railroad foreclosure, Richmond and Danville foreclosure, Georgia Pacific foreclosure, Savannah and Western foreclosure, Marietta and North Georgia foreclosure, and Chattanooga, Rome and Columbus foreclosure, and in the case of the Eagle and Phenix Manufacturing Company foreclosure.

In the case at bar, no such ancillary or auxiliary bill was ever filed in Alabama to subject the property concededly lying within

that State, which was the *whole* cotton mill plant (except, possibly, a few worthless islands).

In this connection, respecting the jurisdiction of the Circuit Court to convey lands in another State, the Circuit Court of Appeals, Fifth Circuit, in the case of Guarantee Trust and Safe Deposit Co. *v.* Delta and Pine Land Co., 104 Fed. p. 5 (May 30, 1900), held as follows:

"While a Federal Court of Equity may compel a conveyance of lands in another State by a decree *in personam*, against a party who holds the title, *it has no jurisdiction to itself to transfer the title to such lands by a sale and conveyance made through the master or commissioner.*"

* * * * * * * *

In the opinion, it is said:

"A writ of assistance, issued by the court in Tennessee to put the purchaser, at the sale made by the master, in possession of the property, *would be wholly inoperative, because such process could have no extra-territorial effect.*"

Toland *v.* Sprague, 12 Pet. 300; 9 L. W. 1093.
Picquit *v.* Swan, 5 Mason, 40; Fed. Cases, No. 11, 134.
Ex parte Graham, 3 Wash. C. C. 456; Fed. Cases, No. 688.
Walker *v.* Lea, C. C. 47; Fed. Cases, No. 645.

See brief of John T. Morgan filed on *certiorari*, pp. 78–89.

See also—

Pennoyer *v.* Neff, 95 U. S. 714; L. W. 565.

See brief of John T. Morgan, Welles, Bennett & Welles, and John M. Chilton, filed under application for writ of prohibition, mandamus, etc., pp. 6 to 14.

V.

In order to determine whether a controversy is between citizens of different States, the court will arrange the parties to the record in accordance with their relation to the controversy and not according to the views of the pleader.

Ketchum v. *R.R. Co.*, 101 *U. S.* 289, 298.
Old Colony Trust Co. v. *Atlanta Ry. Co.*, 100 *Fed.* 798.
Boston, etc., Co. v. *Racine*, 97 *Fed.* 817.
Pittsburg, etc., R.R. Co. v. *B. & O. R.R. Co.*, 61 *Fed.* 705.
First Nat'l Bank of Chattanooga v. *Radford Trust Co.*, 80 *Fed.* 569.

In this case there were three trustees of the mortgage being foreclosed: J. J. Robinson, W. C. Yancey and W. T. Huguley. Yancey was dead, and no successor had been named for him. Robinson was a citizen of Alabama, Huguley a citizen of Georgia. The Alabama and Georgia Manufacturing Company was two distinct corporations of the same name, with two charters, separate charters having been granted, and no consolidation having ever been effected. The Huguley Manufacturing Company was likewise a corporation created under separate charter in each of the States of Georgia and Alabama, and does not appear to have ever been consolidated. As pointed out, *supra*, both the Alabama corporations were *first* chartered and organized, and, because certain islands were supposed to lie on the Georgia side, charters were *subsequently* taken out in Georgia.

No decree was ever entered against the Huguley Manufacturing Company, and as owner of the equity of redemption, it was never accorded its day in court in which to redeem.

Why should Huguley be ruled out as a trustee? Why should he not be classed as a party complainant?

Pacific Railroad Co. v. *Ketchum*, 101 *U. S.* 289, 298.

If, therefore, Huguley (a citizen of Georgia) was a necessary complainant, or should be so classified on the record, jurisdiction fails.

VI.

If there be other essential parties to the controversy who have been omitted, whose citizenship would defeat the jurisdiction if they are necessary parties, whose rights must be affected by the decree, the court cannot proceed in their absence, but must dismiss the bill.

The citizenship of none of the bondholders is made to appear in the bill, and the holders of $22,000.00 of bonds are shown on face of the bill to have accepted their interest, waived the default, and openly repudiated the action of Robinson, trustee, in bringing his bill to foreclose. In one of the first opinions ever rendered in this suit by Judge Newman, viz., upon "taxation of counsel fees, etc.," he said:

"This bill was filed because of non-payment of interest, which, under the contract, gave the right to foreclose, and a serious question was made by the pleadings and the proof in the case whether or not the right to foreclose existed at the time the bill was filed. * * * No right can be claimed here in this respect because of any liability

incurred by the trustee in the performance of his duties, because it appears from the evidence that the trustee required an agreement that he should not be responsible for counsel fees before he would *allow the use of his name* in the suit; and the case has really more the appearance of the holders of these obligations proceeding through the trustee, *as a mere nominal party*, than the act of a trustee in the discharge of the duty incumbent upon him by virtue of a trust which he had assumed and agreed to carry out, etc."

Part I, pp. 158-9.

It would seem from this adjudication that *all* these bondholders should have been made parties to this bill and not merely *Robinson*, the "*mere nominal* party," and that these majority as well as the minority bondholders were therefore indispensable parties, and had their citizenship been made to appear, or had they been joined as parties, the jurisdiction of the Circuit Court would have failed. It is noteworthy that the holders of the other majority bonds ($43,000) deserted Lanier, their former agent and trustee, and refused to permit their bonds used in payment of his bid at the second pretended sale of May 6, 1896.

Part III, p. 68.

If the Alabama and Georgia Manufacturing Company of Alabama, or the Huguley Manufacturing Company of Alabama, are necessary parties to the bill for a decree, the jurisdiction fails.

California v. *Southern Pacific Co.*, 157 *U. S.* 229.

Where parties are necessary and cannot be made without ousting the jurisdiction, the bill should be dismissed without prejudice.

Barney v. *Baltimore*, 6 *Wall.* 280.

Railroad Co. v. *Railroad Co.*, 15 *How.* 233.

Railroad Co. v. *Trust Co.*, 174 *U. S.* 552.

If the allegation of citizenship be sufficient, but the court subsequently discover that it is untrue, or it is discovered in the Appellate Court, each court on discovering the untruth should dismiss said case.

Morris v. *Gilmer*, 129 *U. S.* 315, 325.

Cameron v. *Hodges*, 127 *U. S.* 322, 325.

Nashua R.R. Co. v. *Lowell R.R. Co.*, 136 *U. S.* 356, 374.

Anderson v. *Wall.* 138 *U. S.* 121.

See brief of John T. Morgan on application for *certiorari*, pp. 89-95.

See brief of Morgan, Welles, Bennett & Welles, and Chilton on application for prohibition, mandamus, etc., pp. 19-28.

VII.

Not only must a court have jurisdiction of the parties and of the cause of action, but the judgment rendered must not transcend the power of the jurisdiction.

In this case the court below foreclosed this mortgage for the *entire* amount of the debt, when only a *part* was due. The Appellate Court reversed this decree and annulled the sale on the express grounds that there had been no ascertainment as to the amount claimed to be in default and those not in default, and because the property had been foreclosed as to *all*, whereas some of the bondholders ($22,000 in amount) had waived the default by accepting their interest. (Fosdick's Case.)

Despite this express decision of the Court of Appeals, the lower court then rendered a second decree adjudging *all* of the bonds which had not waived default due with *all* interest thereon.

Part II, pp. 281 and 288.

No credit was given the defendant for any payment which had reached these bondholders through any cash paid on the sale which had been set aside.

These very bondholders whose bonds were declared due had been in possession of the mortgaged property from the time of the first sale.

The court held they ought to be treated as mortgagees in possession, and the rents received applied to pay the mortgaged debt.

Part III, p. 60.

But the court, although ordering an accounting to ascertain what *these bondholders* whose debts were due had received from the rents of the mortgaged premises, refused to credit that amount so received (thirty-five thousand eight hundred and fifty-seven and 54 100 ($35,857.54) dollars) on the amount due these bondholders, although these bondholders then had it as *issues and rents* of the mortgaged property, and decreed that the defendant should pay the full face of the bonds then due with interest to November 1, 1894, or sixty-two thousand and five and 92 100 ($62,005.92) dollars, with eight (8%) per cent. interest from November 1, 1894, instead of applying this credit and requiring only the amount due on these bonds, *i. e.* ($62,005.92 less $35,857.54) twenty-six thousand one hundred and forty-eight and 38/100 ($26,148.38) dollars with

interest, to be paid to prevent foreclosure. And this, assuming that the master's report, and the decree of the Circuit Court confirming same, awarding only this reduced sum—representing merely patent errors shown on face of *forged books* and admitted by the accounting parties—be all that the Huguley Company may be ultimately awarded up to that date. Whereas, the Huguley Company insisted and now insists that they had established, by numerous witnesses and by incontestable proof, the sum of $228,000.00 as due them up to May 6, 1896. (See assignments of errors, Nos. XII to XVI.) If the court was right that these bondholders were entitled to treat these rents as collections from the mortgaged estate on account of the debt, then the court transcended its power in requiring the entire face of the due bonds and coupons, without credit of these rents, to be paid, and in selling for a default in such payment.

The ascertainment and fixing of the amount due on the mortgage, and giving opportunity to pay same, is essential to the right and power of the court to order a sale of the mortgaged property.

"But as in cases of strict foreclosure so in cases of sale, the equity of the mortgagor as against the mortgagee is not exhausted until sale is actually confirmed; for if at any time prior he should bring into court, for the mortgagee, the amount of the debt, interest, and costs, he will be allowed to redeem.

"It is the deed made to the purchaser actually transferring the title of the parties to the suit that terminates the mortgagor's equity of redemption. *Brine* v. *Insurance Company*, 96 *U. S.* 627.

"It is obvious that the finding of the amount due, for non-payment of which, according to the terms of the decree, the mortgaged property is ordered to be sold, is the foundation of the right of the mortgagee further to proceed, and a substantial error in that finding must, on appeal, vitiate all subsequent proceedings. Unlike a calculable error in the amount of a personal judgment which may be cured by a *remittitur*, it is otherwise incurable; for, as it is an illegal exaction, made as a condition for preserving the rights of the mortgagor in his estate, and, if executed, depriving him wrongfully of them, it propagates itself through all subsequent stages of the cause. The right to redeem is a favorite equity, and will not be taken away except upon a strict compliance with the steps necessary to divest it. *Bigler* v. *Waller*, 14 *Wall.* 297; *Shillaber* v. *Robinson*, 97 *U. S.* 68. In *Clark* v. *Reyburn*, 8 Wall. 318, a decree of strict foreclosure, which contained no finding, either of the fact or amount of the alleged indebtedness, and gave no time within which to pay or redeem, was reversed on these grounds, although the bill was taken *pro confesso* as to the parties having the entire beneficial interest, and contained an averment of the precise amount of the mortgage debt then due. The same consequences undoubtedly

would have followed if it had been a decree of foreclosure and sale, instead of a strict foreclosure; and *the error is as vital where a larger amount than is actually due is ordered to be paid*, as where there is a failure to find what amount is due."

Chicago, etc., R.R. Co. v. Fosdick, 106 *U. S.* 47, 71.

In this case when the decree of March 10, 1895, for foreclosure was made, defendants resisted upon the ground that an accounting of the bondholders as mortgagees in possession should be first had, and the amounts received on the mortgage debt from the rents, issues and profits of the mortgaged estate should be applied in order to truly fix the amount which they were indebted. This prayer the court denied, and it is one of the errors which was complained of in the Circuit Court of Appeals.

The property was sold, and was bid in by Lanier as representing the *bondholders*. Lanier did *not* comply with the order of sale and confirmation, and it was not until October 15, 1898, that the decree of confirmation upon which a deed was executed was finally made. During the intermediate time, to wit, not only for the three (3) years and eight (8) months from September 6, 1892, to May 6, 1896, but the two (2) years and five (5) months, viz, from May 6, 1896, to October 15, 1898, these very bondholders, the mortgagee, and those claiming under them, had been receiving the rents, issues and profits of these premises. Such rents, issues and profits belonged to the defendant, the owner of the equity of redemption, and should have been applied by them to the payment of the mortgage debt.

Clason v. *Corley*, 5 *Sandf.* 447.

Astor v. *Turner*, 11 *Paige*, 436.

Mitchell v. *Bartlett*, 53 *Barb.* 319.

"Neither in law nor in equity is the purchaser under the foreclosure entitled to the earnings of the property since the decree of confirmation, because, among other things, he has persistently delayed complying with his bid."

Boyle v. *Trust Co.*, 32 *C. C. A.* 142.

This latter case, and one involving millions, is a precedent representing an adjudication by the Circuit Court of Appeals for the fifth circuit only a few months before the case at bar was decided by the same court. And yet the Court of Appeals ignored our assignments of error covering these material equities.

"It is the deed made to the purchaser actually transferring the title of the parties to the suit, that terminates the mortgagor's equity of redemption."

Railroad Co. v. *Fosdick*, 106 *U. S.* 47, 71.

The report of the master was in, showing that the mortgage creditor had received up to May 6, 1896, thirty-five thousand eight hundred and fifty-seven and 54/100 ($35,857.54) dollars on his mortgage debt.

Part III, p. 37 and p. 53.

Hence only twenty-six thousand one hundred and forty-eight and 38/100 ($26,148.38) dollars, with interest, remained to be paid at the time the decree for sale was made. The court should, therefore, before confirming this sale have required the purchaser to account not only for the profits received during the three years and eight months up to May 6, 1896, but for the additional two years and five months from May 6, 1896, to October 15, 1898 (in all exceeding six years of illegal tenure under an annulled sale); which would have far more than extinguished the balance of the debt, and if such was the case should have declined the confirmation upon the ground that the debt had been paid before deed made.

If it did not entirely extinguish the debt it surely would have reduced it to the point where the mortgagor could easily have paid off the rest and prevented the wiping out of his equity.

The courts will always strive to prevent a forfeiture, and to relieve a mortgagor from the loss of his property.

Hill v. *McCall*, 13 *Iowa*, 467.

Weiner v. *Heintz*, 17 *Ill.* 259.

Hamberger v. *Boyd*, 18 *Ind.* 420.

Brown v. *Frost. Hoffm.* (*N. Y.*) 41.

In this case, therefore, when this decree of sale was rendered, the court transcended its power by decreeing that the mortgagee should pay a sum which the record showed was subject to a deduction for payments received by the mortgagee from the rents, issues, and profits of the estate. When the sale was confirmed it also further transcended its power by confirming it without ascertaining if these rents, to wit, from September 6, 1892, to May 6, 1896, with the further rents, viz. from May 6, 1896, to October 15, 1898, aggregating several hundred thousand dollars, did not more than extinguish the mortgage debt and with it the right of the defaulting purchaser to a confirmation of his sale and a deed two years and five months after the property was bid in, and *over six years from the date of the first sale, which had been reversed, annulled, and vitiated.*

A decree for sale of property for default, in a payment where the sum demanded transcends what the record shows is the debt in default, is beyond the power of the jurisdiction of the court, and the sale thereunder is void.

"The doctrine invoked by counsel that, where a court has once acquired jurisdiction it has a right to decide every question which arises in the case, and its judgment, however erroneous, cannot be collaterally assailed, is undoubtedly correct as a general proposition, but, like all general propositions, is subject to many qualifications in its application. * * * The doctrine stated by counsel is only correct when the court proceeds, after acquiring jurisdiction of the cause, according to the established modes governing the class to which the case belongs, and does not transcend, in the extent or character of its judgment, the law which is applicable to it."

Windsor v. *McVeigh*, 93 *U. S.* 274, 282–3.

No effective sale, conveyance or confirmation under any view against the Alabama & Georgia Manufacturing Company. It had expired before the same occurred.

Charter expired March 21, 1896.

West End & Atlanta Street Ry. Co. *v.* Atlanta Street R. Co., 49 Ga. 151, 153.

Suit against *it* fell on such death. Subsequent action a nullity.

Pendleton *v.* Russell, 144 U. S. 640, 644.

Logan *v.* Western & Atlantic Ry. Co., 87 Ga. 534.

In this case the decree is wholly against Alabama and Georgia Manufacturing Company of *Georgia*.

Part 1, pp. 172 and 175.

Therefore it was an essential party, and as to it the sale and all proceedings are void.

Huguley Manufacturing Company not decreed against.

No *res adjudicata*, even where jurisdiction of case pending, as to those not parties.

VIII.

Both of the sales in question, viz., September 6, 1892, *and May* 6, 1896, *were absolutely void, because, at the time that the Circuit Court of the United States for the Northern District of Georgia assumed jurisdiction to entertain the bill filed by Robinson, trustee, and at the time the respective decrees of sale were rendered, and at the time of said sales thereunder, the property sold or sought to be sold, together with a large amount of cash and other "quick assets"* ($20,000 *in amount*) *were in the possession (in custodia legis) and under the protection and control of the State Chancery Court of*

Troup County, Georgia, through its receiver, H. C. Fisher. Therefore the Federal court was without jurisdiction to entertain said bill or to decree any sale thereunder.

The record in this cause (Part I, pp. 19, 33, 43, 61–2, 81, 164), shows that, in 1888, under a bill filed in the State chancery court of Troup County, Georgia, for an accounting, and under a cross-bill filed by W. H. Huguley & Co., bankers, H. C. Fisher was appointed receiver by said court to whom was turned over by Huguley the factory property and $40,000.00 of cash and other quick assets; that concurrently therewith, or soon thereafter, it not then being conceivable that this great property could be brought to sale under the bonds, and with an eye singly to averting such a possibility, and with the knowledge and consent of both Robinson and Lanier, who were stockholders and directors of the Alabama and Georgia Manufacturing Company, by consent of all parties, the following decretal order was passed by the judge of the superior (chancery) court of Troup County, Georgia, under date of May 22, 1889:

"*Said Fisher, receiver, shall promptly pay the past due interest and the interest to accrue, when due, on the first mortgage bonds of said corporation out of any funds he may have while he remains in office.*" (Part II, p. 142.)

The evidence on the face of the record shows that, under the cross-bill filed by W. H. Huguley & Co., the property was brought to sale on January 6, 1890, and the cotton-mill plant proper was bought in by them. The testimony of W. T. Huguley (answer to Interogatory 9) is as follows:

"Interrogatory 9. The Alabama and Georgia Manufacturing Company did have interest in said litigation as principal defendant. All its interest in *the plant only*, was sold at the receiver's sale at Hamilton, but this by no means exhausted all the assets of the company. At the time of the sale of this realty, the receiver of the State court still held in his possession a large amount of supplies and findings, and also cash and other 'Quick Assets,' valued at about $20,000, all of which were available to meet the interest on the first Mortgage Bonds in conformity with the express order of the State court of May 22, 1889, wherein it was specially enjoined on said receiver to pay promptly 'out of any funds of the corporation he may have, so long as he remains in office,' the interest on said bonds.

"Suffice it, the receiver is still 'in office' and was 'in office' on January 1, 1891, and on that date *had ample cash funds with which to have promptly paid the interest had due demand been made upon him.*

"Until he shall have been discharged he is still the legal representative of the State court and charged with certain duties thereunder, and the corporation not defunct."

The record further shows that said Fisher, receiver, had an office in West Point, Georgia (admission of L. Lanier, answer to interrogatory 3, Part I, page 65), that he had by the express consent of the bondholders, adopted the Atlanta National Bank as the substitute place of payment of the interest coupons, which either directly or through its sub-agents, W. C. and L. Lanier, paid the interest throughout the tenure of said receiver up to the date of the attempted technical default.

Under this state of facts, appellants now insist that as this property, including plant, as well as cash and quick assets are still under the protection and control (*in gremio legis*) of the said Georgia State Chancery Court, which had the first and original jurisdiction to administer its affairs, and that this jurisdiction of the State court was, at the very date that the Circuit Court of the United States, for the Northern District of Georgia, undertook to entertain the bill filed by Robinson, being retained and the receiver continued in office for the express purpose of paying this coupon interest out of his cash in hand and for protecting his said trust under the aforementioned imperative mandate. Therefore said Robinson and Lanier could not legally invoke the aid of the Circuit Court of the United States for the Northern District of Georgia to wreck this valuable property by precipitating a technical default and foreclosure, and they were in contempt of the said Georgia State court in taking such step.

There can be no question, also, that, pending the continuance of the State court's jurisdiction over the property and over its assets of every kind, and so long as its receiver was being kept in office undismissed, under a heavy bond for the faithful performance of its orders, and particularly its injunction to pay "the interest to accrue, when due on the first mortgage bonds of said corporation, out of any funds he may have while he remains in office," then the jurisdiction assumed by the Federal court was wholly unwarranted and illegal, and all its acts and decrees not merely *voidable* but absolutely *void*.

This was the exact question decided in the case of Wiswall *v.* Sampson, 14 How. 52. In that case, while real estate was held by a receiver it was sold by a marshal, and in pursuance of the writ of a Circuit Court of the United States, commanding him to execute its judgment by a sale of the property of the defendant in an

action at law pending in the Circuit Court. The opinion of the Supreme Court contains the following passages:

"A party, therefore, holding a judgment which is a prior lien upon the property *the same as a mortgage*, if desirous of enforcing it against the estate after it has been taken into the care and custody of the court to abide the final determination of the litigation, and pending that litigation, must first obtain leave of the court for this purpose. The court will direct a master to inquire into the circumstances whether it is an existing unsatisfied demand or as to the priority of the lien, etc., and take care that the fund be applied accordingly.

* * * * * * * *

"As we have already said, it is sufficient, for the disposition of this case, to hold, that while the estate is in the custody of the court, *as a fund* to abide the result of a suit pending, no sale of the property can take place either on execution or otherwise, without the leave of the court for that purpose. And upon this ground we hold that the sale by the marshal on the two judgments was illegal and void, and passed no title to the purchaser."

The rule laid down in the case of *Wiswall* v. *Sampson*, that where property is in the possession of a receiver duly appointed by a court of chancery it is in the custody of the court, and no valid sale thereof can be made without first obtaining for that purpose the authority of the court which appointed the receiver—has been adhered to by this court from the time that decision was rendered in December, 1852, until the present time.

See—

Barton *v.* Barbour, 104 U. S. 126, 129.

Krippendorf *v.* Hide, 110 U. S. 276.

In re Tyler, petitioner, 149 U. S. 164, 181.

Pittsburg, etc., Railway *v.* Loan and Trust Co., 172 U. S. 493, 513.

See also decision of Mr. Justice Ma[illegible]s in Heidritter *v.* Elizabeth Oil Cloth Co., 112 U. S. 294, and cases cited.

2d Daniell's Ch. Pl. and Prac. 1431, 1433 (3d Amer. from 3d Eng. ed.)

IX.

GENERAL REVIEW OF CASE, SHOWING THAT ERROR HAS INTERVENED.

Restitution Should have been Promptly Made.

After the mandate of the Circuit Court of Appeals, reversing and annulling the decree of foreclosure and remanding the case to be pro-

ceeded with according to the views expressed in its opinion, holding, among other things, that the error in said reversed decree was so vital as to "vitiate all subsequent proceedings," had been filed in the Circuit Court, and it appeared on the face of the record that the complaining bondholders themselves had purchased said property at the sale under the reversed decree, it became the duty of the Circuit Court to order restitution of the factory property to the Huguley Manufacturing Company, and that without imposition upon it, as condition precedent to regaining possession, the payment into the registry of the court the sum of ten thousand dollars ($10,000.00), claimed to have been paid "into court" on the day of the sale, but no part of which could legally or equitably be taxed against said property, as evidenced by the lower court itself ultimately charging the whole amount "as between the bondholders themselves."

The Circuit Court of Appeals erred in approving this condition as a precedent to restitution.

The bondholders having purchased under a decree of foreclosure, a reversal of that decree entitled the parties against whom it was rendered to be restored to the *status* which they had occupied before it was rendered and executed. Having ousted the Huguley Manufacturing Company of the possession which it had lawfully acquired as the owner of the equity of redemption, it was the duty of the party who had thus obtained possession to make restoration and restitution, and this should have been required before permitting such party to proceed further with his case. It would be very unjust, as was said in *ex parte* Walter Bros., 89 Ala. 239, to permit a party, who had thus acquired possession, to make use of the vantage ground thus wrongfully obtained, thus realizing in advance the fruits of the litigation to which he might only be entitled at its conclusion. It was said in the case cited *supra*:

"We can conceive of no case in which a party, who pays money on a decree which is subsequently reversed, is not entitled to have restitution of what he has paid, and to be reinstated in the position, and to all the rights he had prior to the rendition of the erroneous decree. It is not material what those rights were, or would probably, or even certainly, and necessarily, be determined to be, in the further progress of the litigation. He is entitled to have his final equities adjudicated while he yet occupies whatever vantage ground was his in the inception of the contest, and from that standpoint to invoke the judgment of the law on the issues he presents. When he asks, after the reversal of a decree which has erroneously adjudged his rights and disturbed his relations in the case, to have

his original *status* restored, it is no answer to his petition to say that, on a final hearing of the cause, it will again be decreed that he pay that of which he now seeks restitution.

"To so hold would be to pre-judge the case, to decide in advance of the submission of the issues on pleading and proof that the party, who has been put at a disadvantage by the execution of a wrongful decree, though properly before the court, is not entitled to any relief in the cause. On the other hand, we are unable to see any predicate for the claim of the other party to retain what, confessedly, he has wrongfully received. He had no right to the money involved in the litigation, in contemplation of law, until there should be a correct determination of the matters in dispute, however clear his rights may have been in point of fact. He, therefore, proceeds with the cause, having an undue advantage of his adversary, and is in fact in the attitude of having gained what he claimed before his right to it had or could have been determined. We entertain no doubt, therefore, of the absolute right to have restitution made on the one hand, and the absolute correlative duty to make restitution on the other, wholly regardless of considerations looking to the final equities of the parties."

It is in recognition of this plain and just principle that it is said that every mandate from a higher to a lower court contains by inference a direction to make restitution.

In the case of The United States *v.* The Bank of Washington, 6 Pet. 19, it is held as follows:

"The judgment in form is not only that the judgment of the court below is reversed, but that it is considered that the defendant be restored to all the things he has lost on account of the judgment aforesaid."

Again, in Foster's Fed. Prac., 2d ed., § 495, p. 1093:

"Where a judgment or decree which is reversed has been executed pending the writ of error or appeal, the mandate should include a direction to the court below to compel restitution."

Citing: The Rachel *v.* U. S., 6 Branch, 329.
Bank of U. S. *v.* Bank of Washington, 6 Pet. 8.
Morris Cotton, 3 Wall. 507.
Ex parte Morris, 9 Wall. 65.
Northwestern Fuel Co. *v.* Brock, 139 U. S. 216.

In Perrin *v.* Lepper, 56 Mich. 361, Judge Cooley also said:

"It would be a serious reproach to the law if the litigant could be thus summarily divested of his legal possession and excluded

from it pending what might be a long litigation, with no redress whatever except in future restoration, when perhaps it had been demonstrated that the original exclusion was unwarranted."

It is too well settled for controversy that a reversal of a decree under which a party to a suit has acquired title or possession annuls the title and right of possession, and entitles the party who has been dispossessed to *prompt* restitution.

Herman on Executions, Ch. 608.
Freeman on Judgments, Secs. 481, 482.
Walker's American Law, p. 496.
Beach on Modern Equity Practice, Sec. 993.
Galpin *v.* Page, 18 Wall. 373.

Mr. Freeman (*supra*, Sec. 481), thus states the general rule:

"The reversal of a judgment by any competent authority restores the litigants to the same condition in which they were prior to its rendition. The judgment reversed becomes mere waste paper, and the parties to it are allowed to proceed in the court below to obtain a 'final determination of their rights' in the same manner and to the same extent as if their cause had never been heard or decided by any court. Neither, in the subsequent prosecution of the cause, can suffer detriment nor receive assistance from the former adjudication."

In Sec. 482, the learned author also says:

"Upon the reversal of its judgment against him, the appellant is entitled to the restitution from the respondent of all the advantages acquired by the latter by virtue of the erroneous judgment. The successful appellant is entitled to a restitution of everything still in possession of his adversary *in specie*; not the *value* but the *thing*. * * * If the plaintiff purchase the property of the defendant at a sale under a judgment or decree, his title will be defeated by a subsequent reversal. * * * The right to restitution cannot in any case be resisted on the ground that on final hearing of the cause it will appear that the party of whom restitution is sought is entitled to the property of which he got possession, or of the money which he received under the reversed judgment."

That this is the law of Georgia is shown by Ragan *v.* Cuyler, 24 Ga., p. 400.

Immediately after this cause was first reversed, The Hagueley Manufacturing Company, which had been turned out of possession, filed its petition in which it informed the court below of the fact of the reversal, and that the complaining bondholders, who

had purchased at their own sale, were still in possession. Its prayer was that restitution be made, and that the bondholders account for the rents and profits, etc., during the time they had been in possession—then about ten months.

Part II, p. 1.

When the reason of the rule, which requires restitution to be made is considered, and when it is remembered that *promptness* in the redress, even to making it a condition to a right further to proceed, is a cardinal feature of the redress, it must strike this court that the Huguley Manufacturing Company, which, as the owner of the equity of redemption, had succeeded to all the rights of the mortgagor, has not only been compelled to press this litigation more than ten years, but to do so under all the disadvantages of being out of possession, with its consequent deprivation of means, while the bondholders and the West Point Manufacturing Company, through its "dummy," holding under them, confessedly in possession in their own wrong, have been permitted to retain it for this long period of time, with the consequent advantage of a receipt of the rents and profits.

Part II, pp. 89–91 and 231–232.

The court decreed it was entitled to both restitution and accounting, but required as a condition precedent to relief in either aspect that the Huguley Manufacturing Company refund to the purchasing bondholders, or to parties holding under them, some ten thousand dollars ($10,000.00), which it was claimed they had paid "into court" under the decree on their purchase, and which had been expended in part in paying the costs of the proceeding under the decree which had been reversed, which had been awarded *in favor of* the Huguley Manufacturing Company ($1,002.50), including fees of complainants' solicitors ($2,600.00), the taxation of which the Circuit Court had already held could not be made against the Huguley Company, and fee awarded Robinson, trustee ($500.00), and the remainder of which ($5,897.50) had been expended in a dividend paid upon certain bonds, the holders of which had declined to join in the purchase—a transaction purely personal between the owners of the bonds and the parties advancing the money, and who became subrogated to the equity represented by said dividend. These respective sums made up the $10,000.00, the prepayment of which as a condition precedent to regaining possession of its property and being allowed to proceed with the accounting the Circuit Court imposed upon the Huguley Manufacturing Company.

In the case at bar the lower court ordered restitution, but under an illegal, inequitable and improper condition precedent, *i. e.*, that the Huguley Manufacturing Company, the owner of the property, who was not personally bound for the complainants' debts, and against whom there was no existing decree, should first pay "into court" the ten thousand dollars claimed to have been paid in by the purchasing complainants as part of the price of their bid.

Part II, p. 239.

We know of no case in the books, except this case, where any such condition to restitution was imposed. In every judicial sale, where the plaintiff in execution buys, the price of the sale is paid in by him, and the amount, less costs, is applied to the payment of his debt. In no instance, barring this case, has any court ever held that where the decree under which the sale is made is reversed and it is called upon to do "prompt justice," the defendant against whom there is no judgment, or order or decree to pay money, cannot recover his property from the plaintiff until he pay back in whole or in part the money paid in by plaintiff, which has gone back to plaintiff, or has been disbursed in paying the costs of the void sale.

If the part of the fund so paid in on the void sale had been applied to the payment of past due prior liens bearing upon the property sold, and the remedy by subrogation of the purchaser thereto had been lost or made ineffectual, then it would be proper and right for a court of equity to impose the prepayment of such debts of the owner as a condition to restitution.

But in this case no such equity presented itself.

The defendants were in no manner bound to pay a single dollar of the debts for which the $10,000 were disbursed.

This fund was disbursed, as appears by the report of the commissioner (Rec., p. 41), as follows:

Fees of trustee's solicitors	$2,600 00
To Robinson, trustee	500 00
To court costs	230 50
To special commissioner's fee	400 00
To advertising, etc	370 00
	$4,100 50

And this $4,100.50 was all that was actually paid "into court." The balance ($5,899.50) was paid in cash as a dividend on bonds owned by Mrs. S. H. Huguley and by D. Jannopoulo, and paid to their attorney direct. While the payment was "in a court-house," it

is denied that it was a payment "into court." And it is insisted that the parties so paying this $5,899.50, became subrogated to this extent to the equity held by the said individual bondholders, and that it was a transaction purely personal between them as individuals.

As shown by the final decree (Rec., pp. 52 and 57), these identical bonds were excluded from the benefits of foreclosure and the principal thereof was declared not in default.

Part II, pp. 283 and 286.

In the same final decree (Rec., p. 138), full provision is made for the protection of the payers of the dividend on the excluded bonds, viz:

"In making distribution, any bonds on which a percentage has been paid in cash to former holders, and credited thereon for money paid into court under the first sale of said property, shall be controlled by the person or persons so paying the money into court for the purpose of reimbursement of such money so paid, and the person so paying said money shall receive all dividends that such bonds may be entitled to until they are reimbursed the amount so credited on said bonds and interest thereon at 8 per cent. per annum. And the original holders of said bonds are not entitled to receive any percentage on said bonds until after the amount so advanced is repaid to the person so advancing it."

Part III, p. 66.

This disposes of the larger item of the $10,000 "condition precedent."

As to the next largest item—attorneys' fees—($2,600), before this petition for restitution had ever been filed, the very court which refused it, had in this very case and in its very first opinion rendered, decided that defendants were *not* liable for solicitors' fees. Its language upon this point, in sustaining the demurrer of defendants to a petition of Robinson, trustee, asking $1,000 for himself and $7,500 of fees for his solicitors, was, in effect, that to tax such fees against the property would be a fraud upon the rights of the Huguley Manufacturing Company. (Part I, pp. 158–9.)

As to the next item ($1,000.00), representing the actual costs proper, the Huguley Manufacturing Company, upon succeeding in reversing the case on first appeal, had been awarded the "costs" as matter of course, and certainly no part of this item could be made a "condition precedent."

Lastly, and in fullest recognition of the original contention on

the part of defendants that no part of said $10,000.00 was taxable against them, the same Circuit Court, in the final decree in this case (Rec., p. 137) adjudged that identically the above costs, fees, etc., going to make up the "condition precedent," plus $2.00 additional, "paid out under the first sale of the property, and which sale was set aside," should be paid by the *complaining bondholders* "*as between themselves.*"

Part III, p. 65.

And yet, because the Huguley Manufacturing Company refused to meet this most inequitable and illegal "condition precedent"—admittedly wrongly charged at its door—it has been deprived of possession of its great manufacturing property and the rents and profits thereof for now ten years.

The purchasers went into possession of this property on September 6, 1892.

The judgment was reversed and the sale annulled on May 30, 1893.

The application for restitution of the property and for an accounting for rents and profits was made July 10, 1893. (Part II, p. 1.)

This application was renewed and refused September 22, 1894 (Part II, pp. 239–240), after the purchasers had been in possession for more than two years, of which period sixteen months had elapsed since the reversal of the decree.

The court even refused to order a reference to take an accounting of the rents and profits during this clearly illegal detention, except upon the condition that the defendants first pay in the $10,000.00 (Part II, p. 242). And even after it had entered this order the court cancelled it on the same day, on the ground that the "subject-matter was covered by other orders" (Part II, p. 244). So that the defendants were left out of possession of their property, with no judgment or decree against them, face to face with a coming foreclosure, and even denied the right to have an accounting before the same master, who was taking an account of the mortgage debt, of the rents and profits due by the very persons to whom the mortgage debt was due.

The only relief obtained in the Circuit Court of Appeals from these manifest errors and injustices was an affirmance, with the suggestion in the opinion that defendants were entitled to an accounting.

Alabama & Georgia Mfg. Co. *v.* Robinson, 72 Fed. Rep., p. 709.

In this connection, it becomes interesting to reproduce the views of Judge Newman of the Circuit Court, as expressed in his opinion in Part 2, pp. 236, and 238–9.

"The authorities are somewhat in conflict as to how far a sale, by virtue of a judgment which is subsequently reversed, conveys title which will protect against a motion for restitution after reversal. It is contended here, and mainly on the authority of the case of *Marks* v. *Cowles*, 61 *Ala.*, 229, that not only will such restitution be ordered as between the parties to the case, and as against the plaintiff when he has purchased, but also as against the assignee of a party who purchases. It is contended, and it is so held in the case named, that the party who purchases at such a sale, gets only a defeasible title, and can convey no greater title to the assignee than he himself obtains. The doctrine of this case would unquestionably require an order of restitution here. The correctness of the rule stated in that case is endorsed in *Freeman on Judgment*, Sec. 484. The question of the right to restitution of property when there has been a reversal of a judgment, by virtue of which a sale is made, has been several times before the Supreme Court of the United States. The last case to which attention has been called, or which has been found, is the case of *North Western Fuel Company* v. *Brock*, 139 *United States*, 216, and while that was a case where it had been held that the judgment was one which the Circuit Court had no jurisdiction to grant, still former decisions of the Supreme Court are cited and somewhat discussed. These cases, as well as the cited case by the Supreme Court, seem unquestionably to hold that restitution will be granted on a reversal judgment as between the parties."

After reviewing among other authorities, South Fork Canal Co. *v.* Gordon, 2 Abb. 479–488, Judge Newman concludes as follows:

"So it must be taken as established by undoubted authority, and indeed by controlling authority, that restitution would necessarily be directed in this case as against the bondholders who originally purchased the property at the sale.

"Now has there been such change in the title to the property as will protect it against restitution to the Huguley Manufacturing Company, the original owner? There would be no difficulty whatever, as to the Galeton Cotton Mills as it was originally organized, with the stock in the hands of the bondholders who purchased at the foreclosure sale. The real trouble is that the holding of the stock is changed from these parties to the West Point Manufacturing Company. The West Point Company is not a party here, but the fact of the transfer of the stock has been put in evidence on the hearing of this motion by the Galeton Cotton Mills for the purpose of showing that its stock had gone into other hands, and that the parties to this case are not the real owners of the stock, and consequently of the property. L. Lanier appears by the evidence to be

the president of the Galeton Cotton Mills, and secretary and treas urer and active official, so far as this transaction is concerned, o The West Point Manufacturing Company. He was also the prin cipal member of the purchasing committee for the bondholders, an he was quite a large holder also of the stock of the West Poin Company.

"It cannot be said, therefore, that there is such alienation o this property to a stranger, to one new to the transaction, as woul make it necessary to go into this case to the extent that the Su preme Court of Alabama went in the case of *Marks* v. *Cowle supra*. But the truth seems to be, as is urged, that L. Lanier, wh was the principal acting in the purchase, was in all subsequen transactions the representative of buyer and seller of assignor an assignee. I am not prepared to take issue with the doctrine o Marks *v.* Cowles, *supra*, but if it is necessary in the opinion of th court to invoke it in this case, as under the peculiar facts show here, while restitution will involve some complications and som difficulty, perhaps, in its practical enforcement, I feel it my dut upon the repayment of the cash paid by the purchasers, to direct i Before any order is made in the matter, however, it will be neces sary, probably, to hear counsel as to its terms and conditions. I may be proper to add that in the opinion of the appellate court direct ing a reversal of this case, this language is used: 'It is obvious tha there was such substantial error in that finding as must, on appea vitiate all subsequent proceedings.' The record in the appellat court showed the sale and the confirmation of the sale, and th language used clearly indicates that the proceedings up to the tim of the purchase by Lanier and others as representatives of th bondholders, in the opinion of that court was annulled by its judg ment of reversal."

In view of the foregoing pronounced adjudication on his part, i is difficult to conceive how the honorable judge could reconcile hi right to withold the possession of the property and the accountin for rents upon the flimsy pretext exposed *supra*.

X.

The court without power to change the terms of sale and then con firm—should either confirm or set aside the sale, but cannot modif its terms—cannot reverse, annul, or modify decree after end of it term. Such an act would have no validity.

In Rorer on Judicial Sales, Sec. 126, p. 57, it is said:

"But it (the court) cannot change the terms of sale and then con firm. Such an act would have no validity."

Ohio Loan and Trust Co. *v.* Goodin, 10 Ohio St. (N. S.) 557
Renz *v.* Hines, 3 Kansas, 390.

In the case of Compton *v.* Jesup and Dixon, Trustees, &c., 167 U. S. 55 (see S. C. Rept's ed. 1–37), the court say:

"And it may well be doubted whether it was competent for the Circuit Court, at a subsequent term, to disturb the rights of Compton, defined and adjudicated at a previous term in the final decree of sale.

"A judicial sale must be made in accordance with the decree of the court, and its terms cannot be changed by agreement of the parties or counsel, not incorporated into the record. The officer conducting a sale is not required to entertain any bids coupled with conditions not in conformity with the terms of the decree."

Nebraska Loan and Trust Co. *v.* Hamer, 40 Neb. 282 and 293–4.

"A purchaser at a judicial sale is entitled to look to the judgment or decree for the measure of his rights, and need look no further. It is his contract with the court and should not be changed."

Central Trust Co. *v.* Wabash, St. Louis and Pacific Ry. Co., 30 Fed. 332.

Citing:

38: 63.

38: 64.

In the Central Trust Co. *v.* Wabash, St. Louis & Pacific Ry. Co., 30 Fed. 332, it is said:

"Held that it was too late, after such decree and sale, for holders of such underlying mortgage bonds to object to the manner in which the earnings of the system had been applied prior to the decree and to proceedings to foreclose their mortgages, and *too late for the court to so alter the decree as to change the rights of the purchasers.*"

38: 63–4.

And the court concludes:

"And *no court ever did, and no court ever ought to change the contract which it has made.*

"Concurring fully in what has been said by the circuit judge, I shall add but one or two suggestions: An insuperable objection to granting the prayer of the petitioners, in my judgment, lies in the fact that such action would materially modify the terms of the decree under which the purchasing committee have bought, and, in effect, compel the committee to take the property on different terms than were proposed at the time of sale, and this after the contract of sale has been partially executed. * * * I merely emphasize the point that we have no legal right, at this time, the decree having been settled after mature deliberation and with full opportunity

to all parties to be heard, to modify its provisions or take any action that would, in effect, change the terms of sale."

Central Trust Co. *v.* Wabash, St. Louis & Pacific Ry. Co., 30 Fed. 332.

See also rule laid down in Black on Judgments, Vol. I, Sec. 154, and cases cited.

Beach's Mod. Eq. Prac., Sec. 850, and cases cited.

That the Circuit Court of the United States for the Northern District of Georgia, did, on June 4, 1898, and on October 15, 1898, —three years, six months, and fifteen days after its decree of sale, and two years, five months, and nine days after the second pretended sale,—change not only the *terms* of sale for *cash* (or payable in bonds) to *a three-year credit sale*, at 7 per cent. per annum, and exempting the purchaser from rents meantime, but change the *parties* from the bondholders in whose name the property was knocked down and formally reported to L. Lanier, *individually*, or such persons as *he* might designate. See—

Final Decree of Mch. 30, 1895, Part III, pp. 6-11.

Order Directing Resale of Property, Mch. 10, 1896, Part III, p. 13.

Commissioner's Report of Sale, May 27, 1896, Part III, p. 19.

Petition of L. Lanier for Confirmation of Sale, May 27, 1896, Part III, p. 20.

And compare the terms of these with—

Decree on Application to Apply Rents to Mortgage Debt, June 4, 1898, Part III, p. 64.

Petition of L. Lanier, "Purchaser," for Deed Absolute, Sept. 22, 1898, Part III, p. 67.

Answer to Petition of Lanier, Oct. 4, 1898, Part III, p. 69.

Decree Upon Petition for Deed, etc., Oct. 15, 1898, Part III, p. 72.

XI.

The court without power, after the adjournment of its term, to change the "parties" to a sale. Deed can only be made to the original bidder or purchaser. If bidder fails or refuses to complete the purchase and payment, another person should not be allowed to take the property at the former bid.

"Upon a sale by a master, if the bidder to whom the property is

struck off refuses to complete the purchase, the master SHOULD NOT ALLOW *another* PERSON TO TAKE IT AT THE FORMER BID."

Daniell's Chanc. Prac., Vol. 2 (6th ed.), Sec. 1282, p. 1267, citing: Thompson *v.* Dimond, 3 Edwds. Ch. 298.

"THE DEED CAN ONLY BE MADE TO THE *original* PURCHASER AT THE SALE, or to his successor in interest."

Freeman on Void Judicial Sales, Sec. 46.

Carpenter *v.* Sherfy, 71 Ill. 427.

"A conveyance TO A PERSON NOT ENTITLED TO RECEIVE IT, as where a deed is given to one 'AS ASSIGNEE,' when *no* assignment has been made, *is void*."

Freeman on Void Judicial Sales, Sec. 46.

Carpenter *v.* Sherfy, 71 Ill. 427.

"If the Wabash Railroad Company be regarded simply as an *outside* PURCHASER, it cannot be heard to object to the terms of the decree of sale."

Compton *v.* Jesup, 167 U. S. 55.

In this connection, the attention of the court is especially asked to the "Petition of L. Lanier, for a Deed Absolute" and the admissions thereunder, on pages 67–9 of Part III, and the "Answer to Petition of L. Lanier for Deed" filed by the Huguley Manufacturing Company, Part III, pages 69–72, and to Judge Newman's "Decree upon Petition for Deed Absolute," Part III, pages 72–74. (Yellow cover).

XII.

Rights of lien-claimant; acquiescence in decree; purchaser at foreclosure sale, subject to liens established or to be established bound thereby, and cannot object to enforcement of lien or a re-sale; trust relation set up, involving accounting for rents and profits.

While appellants contend that the pretended sale of May 6, 1896, absolutely failed, and was utterly void for non-compliance, in any event, if it could be held to be a sale, as pointed out in their petition for a rehearing before the Circuit Court of Appeals (Part III, p. 99) said sale was subject, in express terms, to the prior lien vested in them by decree of the Circuit Court of June 25, 1896, confirming, in part, said sale, but expressly subject to the following prior lien for rents and profits, etc., there and then vested in them, which

could not be taken away nearly three years afterwards, at the mere *dictum* of said court. We quote:

"3. An order of reference having heretofore been entered in this cause directing Thomas B. Fielder, Esq., to ascertain and report to the court certain claims for rents, profits, wastes, and conversions in respect to the said property, and said investigation now being in progress before said special master, it is ordered, adjudged, and decreed that should the said accounting finally result in a judgment in favor of the Huguley Manufacturing Company, then such judgment, for any amount thereof in excess of any deficiency due by the defendants to the complainant in the foreclosure proceedings shall, for such excess be, *and remain a lien upon said property in favor of the Huguley Manufacturing Company, as against the purchasers at said sale or any persons holding under them.*

"*And the court retains and reserves the right to seize and order a sale of said property for the purpose of satisfying any such balance so found to be due as hereinbefore set out, and the title shall be made by said commissioner to the purchaser subject to this provision.*"

Part III, page 25.

In Compton *v.* Jesup & Dixon, Trustees, 167 U. S. 55 (See S. C. Reporter's Ed., pp. 1–37), is held in the head notes as follows:

"The right of a lien-claimant, reserved in a foreclosure decree which provides that if his lien is established he shall be paid a certain sum, in default of which the court shall resume possession of the property affected by his lien, and enforce the decree rendered in his favor 'by a resale of such property or otherwise, as this court may direct,' includes the right to a resale of the property, and is not limited to a redemption thereof.

"Persons who procure or acquiesce in a decree of foreclosure reserving the rights of a lien-claimant, and who participate in the benefits of an early sale thus secured, cannot object to the enforcement of the lien in the manner pointed out in the decree.

"A purchaser on a foreclosure sale cannot object to the terms of a decree of sale which provided for a resale on certain conditions.

"A purchaser of a railroad on foreclosure under a decree reserving the rights of a lien-claimant, holds a trust relation which involves an accounting until the lien is disposed of."

See Compton *v.* Jesup, 167 U. S. 55.

This case is so perfectly analogous to the case at bar that it is deemed best to quote therefrom the following extracts from the opinion of Mr. Justice Shiras (Decided in 1897), who held as follows:

"We think that these observations (on part of the lower court) show a plain disregard by the learned court of the terms and obvious meaning of the decree of March 23, 1889. When the terms of that decree were fixed, all parties to be affected thereby agreed to the same. The issues raised by the pleadings as to Compton's claim were *still pending and undetermined*. It was evidently the wish and the interests of all the parties to have the sale effected at once; and in order to avoid the further delay that would be occasioned by awaiting the determination of these issues, the provisions or reservations in Compton's favor were put in the decree."

[In case at bar no such consent was had, but that sale resisted.]

* * * * * * *

"When, etc. * * * we do not think it was open for the court, consistently with the terms of the decree of March 23, 1889, to deprive Compton of the rights and remedies therein conferred. * * * When the Circuit Court speaks of a re-sale as inequitably affecting the rights of the prior lien mortgagees and of the purchasers who have succeeded thereto, it is evident that the court overlooked those provisions of the decree which, in express terms, subjected such purchasers to Compton's rights to a re-sale, if they do not choose to pay him the sum awarded by the decree. So when the court says that Compton could as well have been a bidder at the sale as at a re-sale, if one be ordered, it omits to notice that when the sale took place under the decree, Compton's claim was *undetermined*, but that provision had been made for him in the event that his claim was held valid. He could not safely bid because he could not foresee whether his claim would be allowed, and the arrangement made relieved him, very properly, from the perplexity to which he would have been subjected if the sale had been unconditionally made, when the fate of his claim was uncertain."

* * * * * * *

[In case at bar the Huguley Manufacturing Company proposed to bid $200,000.00 for the property if the court would postpone the sale until the coming in of the master's report. Part III, p. 23.]

"The decree of March 23, 1889, under which the sale was made and confirmed on May 18, 1889, was, in all essential respects, the final decree in the case, the questions reserved being merely incidental to carrying the decree into full effect. That portion of said decree which established Compton's rights was, in its nature, final; the only matter which was kept in reserve as respects Compton, was the awaiting the determination of the validity and the amount of his claim by the report of the special master. And it may well be doubted whether it was competent for the Circuit Court, at *a subsequent* term, to *disturb the rights of Compton*, defined and adjudicated at a *previous* term in the final decree of sale."

The court, after reviewing the case of Central Trust Co. *v.* Grant Locomotive Works, 135 U. S. 207, and of Swan *v.* Wright's Executor (Swan *v.* Fabyan, 110 U. S. 590), concludes:

"But we think the better view is that the Wabash Company should be regarded as a party in possession under the express terms of the order of sale, and as representing all parties in interest, including Compton; and hence, cannot claim to be an absolute purchaser of the rights of a mortgagor not subject to account for rents and profits. In that point of view, there is a trust relation, which involves an accounting until Compton is disposed of."

Compton *v.* Jesup, 167 U. S. 55.

The same principle is upheld by this court in other familiar cases.

Central Trust Co. *v.* Grant Locomotive Works, 135 U. S. 227.

Kneeland *v.* Am. Loan & T. Co. of Boston, Sup. Ct. ed. 34: 379.

Markey *v.* Langley, 92 U. S. 701.

Whiteside *v.* Haselton, 110 U. S. 152.

Stewart *v.* Gay, 127 U. S. 518.

Freeman on Judgments, Sec. 208.

Norton *v.* Nebraska Loan & T. Co., 35 Neb. 466, and cases cited.

The history of the gross errors committed by the master in connection with the reference and accounting taken in favor of the movants, the Huguley Manufacturing Company, up to May 6, 1896, incident to his use of certain books vouched for by the officers and attorneys of the accounting parties and insisted upon as being books of original entry, but after the evidence was closed, proven to be patent *forgeries* and ruled out by him as such, has been so exhaustively treated, and the fraud so clearly exposed in the brief of Messrs. Farrar, Jones, and Kruttschnitt and J. M. Chilton, under their previous petition for *certiorari*, that we here reproduce the text of same *in hæc verba*, and also quote from their brief on one or two other material points. The original of this brief (revised) they have filed under this appeal, and we beg the court now to re-examine the same, in connection with those filed by Hon. John T. Morgan and by ourselves herewith, and also upon our petition for writ of prohibition, mandamus, etc.

XIII.

"The proceedings before the master on the reference were conducted and the report of the master was made in violation of the terms of the reference and of the seventy-ninth rule in equity prescribed by this Honorable Court. The refusal of the Circuit Court of Appeals to consider this assigned error amounted to a denial of justice by said court."

The master's report bears on its face evidence of the truth of this charge.

Part III, pp. 25–38.

The assignments of error state the details with minuteness, and it is unnecessary to repeat them here.

Part III, pp. 79–95.

XIV.

The action of the master in admitting as evidence books and vouchers of the complainants without proof of their identity, verity, or contents by those who kept the books and made the vouchers, in excluding the books when they were shown to be forged, in refusing to exclude the vouchers, and then in continuing to use the excluded books and the unproved vouchers, as the basis of the accounting, was error of such a nature as to vitiate his whole report.

The refusal of the Circuit Court of Appeals to consider this specially assigned error amounted to a denial of justice by said court.

The single episode of the forged books, shown to be in the same handwriting as that of the account sales of Boynton & Co., the sellers of the product of the mills, which were tendered in evidence as the *original* books of the Galeton Cotton Mills, the ruling of the master that he would let them "come in as a memorandum," his use of them in basing his report upon their footings, and deducting from the amount due respondents an alleged loss shown by them in the operation of the mills, were sufficient to condemn this whole report apart from any other consideration.

Even if they had been original, these books were not admissible in evidence in behalf of the corporation. (Wharton on Evidence, Sec. 662.)

And, if admissible, their genuineness and correctness ought to have been shown by the testimony of the person who kept them. (Wharton on Evidence, 1131; Chaffee & Co. *v.* U. S., 18 Wall., p 541; Nicholls *v.* Webb, 8 Wheaton, 326; Ins. Co. *v.* Weide, 9 Wall. 617.)

Even the pretended books produced were incomplete and worthless. There was no day-book, no cash-book, and no stock-book (*i. e.*, a book showing the product of the mill and its disposition), and it was, therefore, impossible to check the pretended ledger.

The pretended vouchers were in the same condition as the books. The testimony of no witness who made any voucher, or who knew the contents thereof, or who conducted the transaction it purported to certify to, was taken.

To check the forged books, let in "as a memorandum," by vouchers of this kind, was a simple travesty, and to hold that the parties entitled to the accounting were bound by the results of these pretended books and vouchers, and that these documents conclusively showed what the actual rents and profits of the mill were, and that the burden of proof was on the defendants to attack the footings shown by these books, was a wide departure from the most elementary principles of right.

There was more than one circumstance to discredit and condemn these books.

In the first place, they were produced and offered as books of *original* entry, and were afterward shown to be *forgeries. No explanation was ever tendered of these facts.*

In the second place, they were shown to be in the same handwriting as the pretended account sales of the product of the mill.

In the third place, they were incomplete and not accompanied by any day-book, cash-book, or stock-book.

In the fourth place, when first tendered and identified by Lanier, on February 17, 1897, they were written up only to January 1, 1895. Respondents demanded that they be impounded, and the master so ordered. By some means not explained they were abstracted, and, when returned on the complaint of respondents, *were written up to August*, 1896. *No explanation was ever made of the mysterious additions to these books.*

The petition for an accounting was pending from March 13, 1893. The term of the accounting extended from September, 1892, to April 30, 1896. Therefore, accountants *were warned of their coming responsibility.* They could have made their accounting as clear as the noon-day sun, with a specification of detail and a wealth of

original evidence of confirmation that would carry conviction in any mind. They were business men and not greenhorns. They operated under the form of a corporation where discipline could be rigid and no divided counsels prevail. But it was their interest to show no profits. They were bound to operate the mill, and such a mill must make money. How conceal the fact that it did make money? Overcharge for cotton bought! One cent a pound on the amount consumed reduced the profits $50,000. Undercharge for the goods sold! One cent a yard on the goods produced reduced the profits $100,000, and these were the amounts proven by numerous witnesses as the overcharge on cotton and deficit or under-return for the duck. Pay enormous commissions, high rates of interest, large discounts on datings!

Every circumstance connected with this accounting was such as to induce a seeker after justice to scan every item and document produced by these parties with suspicion.

But how work all this so as to save for the accountants the real profits of the mill? Very simple. Let the individuals, who are the real parties in interest, buy the cotton, sell the product, receive the commissions, and charge the interest. And that is just what was done in this case. The commercial firm of W. C. & L. Lanier bought the cotton, and the commercial firm of N. Boynton & Co. sold the product, got the commissions, the discounts on the datings, and the interest. L. Lanier was one of the purchasing committee at the first sale, was the whole purchasing committee at the second sale, was president of the Galeton Mills and of the West Point Mills, to whom all the stock in the Galeton Mills had been sold.

Horace Sears was treasurer of the Galeton Mills, and a member of the firm of N. Boynton & Co., and he and the other members of that firm were large stockholders in the West Point Mills.

The books of the Galeton Mills showing what Lanier & Co. had charged them for cotton were not enough. These persons were not the sellers of cotton, but the mills' agents to buy. They could have shown, and their principals ought to have made them show, the date of each purchase, the marks of the bales, the places where bought, the price paid, and the names of the vendor; and their statements could then have been verified.

Surely the accountants owed this same obligation to the owners of the property!

Not knowing these facts, which the accountants ought to have been made to show, petitioners established what the average price cotton was, day by day and month by month, in the markets where

this cotton was bought, and compared this with the average price of the cotton charged to the Galeton Mills by Lanier & Co., day by day and month by month, and demonstrated an enormous overcharge.

The master disposed of this demonstration by saying (Rec., p. 94): "The movant undertakes to establish such an inference by a comparison of the prices paid with certain average prices of cotton for specified months. It would seem that the proper way to show such overcharges, if they existed, *would be to show the date and amount of each purchase, and the market price of cotton in West Point on those days.*"

But there was before the master evidence to show these very facts in the very way he wanted them shown. The Galeton Cotton Mills' cotton book showed the date, number of pounds and price charged for cotton. The original cotton books of Atkinson & Turner, of West Point, Ga., large cotton buyers, were also in evidence, being offered by accountants. These two books were compared date by date, and they showed an overcharge for cotton amounting to $44,410.67.

The account sales of Boynton & Co., not identified by the man who made them, not verified by the oaths of the persons who conducted the transactions therein certified to, not accompanied with any proof of the disbursement of the enormous charges, deducted from the gross proceeds, were not sufficient to show anything on earth except that such papers were in existence and had been sent from Boston by Boynton & Co. to the Galeton Cotton Mills.

Movants were driven to the same method of proof by average prices, day by day and month by month, to demonstrate a sale of the product below the market price.

They made this demonstration beyond the peradventure of a doubt, and the master disposed of it as follows (Part III, pp. 34-5): "The movant introduced a number of witnesses who testified to the average prices of these classes of goods, and seeks to show, by a comparison of the average prices testified to by these witnesses with the average prices realized by the Galeton Cotton Mills, that the prices realized were far below what they should have been. It would seem that in impeaching the account of sales rendered by the respondent the movant ought to show that the goods at the time they were sold brought less than the market price of the same grade of goods at the time and place of sale, *and that the failure to realize the best price obtainable was by the wilful default of the respondent.* Neither of these propositions is shown by the evidence, while the evidence for the movant, in the shape in which it is presented, may suggest

an inference that the goods sold for account of the Galeton Mills ought to have brought better prices, still the evidence *strongly indicates* that the product of this mill was not equal in quality to those goods to which the market price applies."

The testimony which gave this "strong indication" was that of Lanier and Wellington, a partner of N. Boynton & Co.—two interested witnesses, absolutely contradicted by J. S. Hamilton, Geo. W. Hamilton, Henry Harvey, T. A. Burke, R. J. Patton, Wilmer Moore, D. O. Dougherty, Jos. Kingsbery, and W. S. Everett, all entirely disinterested and all engaged in the cotton duck business as operators of competing duck mills *in the same* territory, or jobbers in duck.

But even then, allowing for all the depreciation in the quality of the duck made by the Galeton Mills, below standard duck, sworn to by these two men, and not one-half of the deficiency below the price realized was accounted for.

Wellington said the undervaluation, owing to lower quality, was from 2½ to 5 per cent. This would make 10-oz. duck, of which market value was 8.50 cents per yard, with 5 per cent. off, realize 8.7 cents, or less than one-half a cent per pound off.

Lanier said the undervaluation owing to quality was from one-quarter to one-half a cent a yard.

But the testimony showed an average deficit of 1.24 cents per yard all round. Even allowing full force to the claim of lower quality, there was an unexplained deficiency in price of .74 of a cent per yard. The allowance of this comparatively small deficiency would have made the accountants pay petitioners $62,665.84 on this item alone.

Because of its great importance, as evidencing the desperate tactics employed by these accounting parties in their vain endeavor to escape disgorging the large sum of rents and profits decreed against them in favor of interveners, the Huguley Manufacturing Company, it is deemed advisable as a ready reference of the court to here append the evidence of Judge Chilton, and of the expert accountant, Mr. Hamilton (witnesses for movants), with other evidence of Lanier, exposing the wholesale fraud and outrageous conspiracy on part of defendant accounting parties by which they sought to palm off upon the master and upon these appellants certain books and accounts sales which were proven by the *water marks* and otherwise to have been *forged out of the whole cloth*. Upon these forged documents, *no other oral evidence being offered*, the appellees planted their whole defence to the charge of $228,000.00 for rents by appel-

lants, which was proven by numerous witnesses of the hi
tegrity and standing and who appeared in person, whose t
was *admitted* and yet *ignored* by the master who elected
such false and fraudulent documents in preference.

EXTRACT FROM TRANSCRIPT OF RECORD, VOL. 3.

(Condensed Transcript of Printed Record, with Extra
Record No. 798, certified up by McKee, Clerk Circuit Cou
peals, Fifth Circuit, on application for *certiorari*. Pp. 188

(Typewritten and Unprinted.)

Old Nos. pp. 1353–1354.
New Nos. pp. 1569–1570.

TESTIMONY OF L. LANIER, taken February 16, 1897

(Direct Examination by P. H. Brewster.)

Q. We put in a book yesterday that contains all of tho
is that book?

A. There are the books; they are on two books there.

Q. Which one of those contains all the matter you ha
contained on the vouchers that you have stated were corre

A. Those two books, one is the "*Journal*" and the
"*Ledger*."

Q Have you checked all that book and know it correspo
those vouchers?

A. I didn't do it all myself; I hired part of it done.

Q. The vouchers for all those charges are containe
bundle?

A. Yes, sir.

Judge Hammond: If the witness has not done it himself
swear to it.

Col. Brewster: We tender the books in evidence.

Judge Hammond: I object to the books being in evid
has not been testified that they are correct by the party
them.

The Master: If I find that the vouchers have been in
entered, or column of figures has been wrongfully totalled
consider the books.

Judge Hammond; I object to the books as original evid

Col. Brewster: I insist that they go as original evidence

Judge Hammond: I make the point, they are not admissible as original evidence, because the foundation for the books has not been properly laid. The evidence does not show that the entries on the books are correct.

The Master: I think they are admissible, since they bring the original vouchers and tender them along with the books; I think that makes it original evidence.

Judge Hammond excepts to the ruling.

Examination by Judge Hammond:

Q. Mr. Lanier, do those books contain all the vouchers, all the entries from all those vouchers, of your own knowledge?

A. I have not checked all of them; I have not gone over all the items.

Q. You have not rechecked them all?

A. Not all of them.

Q. How many have you checked?

A. Some of the first; perhaps a year and a half of them.

Q. Out of that period of time?

A. The first of the operations of that mill?

Q. A year and a half out of the period of three years and eight months?

A. Yes, sir.

Q. Do they contain anything else except what is in those vouchers?

Do those books contain any other entries except what is in those vouchers?

A. They contain credits for the sales of the goods.

Q. What I want to ask you is this: did they contain anything in addition to the things you testified about, the Account Sales, the credits and dates from those vouchers? they contain nothing else but those?

A. No, sir.

No. 1355–1371.

Judge Hammond: I object to the books as original evidence, on the ground that they are not sufficiently shown to be correct.

The Master: As the books are accompanied by those other papers, as an earnest of their correctness, I will admit them.

(By Col. Brewster.)

Q. These papers contain your disbursements?

A. They do; yes, sir.

Q. They contain all that has been paid out?

A. Yes, sir.

Q. Where is the original evidence of your receipts?

A. Those Account Sales.

Q. What are they?

A. The Account Sales made by our selling agents; the accoun rendered by the selling agents of the goods sold for each month; the month; they are made out by the month.

Q. Does that cover the whole period of time?

A. That covers up to the first of January, 1896.

Q. Who was your Selling Agent?

A. N. Boynton & Co.

(By Judge Hammond.)

Q. Do the books cover the whole time?

A. Yes, sir.

Q. These books come up to the first of January; the Accou Sales come up to the first of January?

A. Yes, sir; the other accounts sales will be forthcoming.

Col. Brewster: We tender these books in evidence.

(By Judge Hammond.)

By Judge Hammond.

Q. (By Judge Hammond:) These are accounts sales rendered y by your selling agents?

A. Yes, sir; N. Boynton & Co., Boston.

Q. Those are papers sent you by your selling agents in Bosto and you don't know whether they are correct, except that you kn those accounts cover all goods sent you by your selling agents?

A. Yes, sir.

Q. But whether they are correct or not, you don't know?

A. In what way?

Q. You don't know whether the prices of those accounts sales a the real prices received for the goods?

A. They were satisfactory prices, the prices given.

Q. Were they the market prices?

A. Yes, sir.

Q. The full market prices for those goods?

A. I considered they were.

Q. Do you know that of your own knowledge?

A. Well, yes.

Q. You say, "Well, yes;" why do you hesitate?

A. I don't sell any goods myself.

Q. Therefore, you don't know, of your own knowledge, about it; you depend upon others for your information about it?

A. I depend upon others for the market.

Q. Who did you get your information from?

A. From different periodicals and the prices made by people.

Q. Did you keep up with them yourself, or is there some other man connected with it who does?

A. It is my business.

Q. It is your business to keep up with the sales and prices?

A. Yes, sir.

Q. You get them from the market reports?

A. Yes, sir.

Q. You can't say, from your own knowledge, that those prices correspond with the market reports?

A. For that grade of goods?

Q. Did you examine these reports to see if they would correspond, check them with the market reports?

A. I didn't do that each time; no, sir.

Q. I wanted to know whether you made it your habit to do that or not. I want to know whether you were careful or not each time to see whether they had obtained the market prices.

A. I go over the lists of accounts sales carefully.

Q. I understand you go over them and see that they brought so much, but can you say these accounts sales show that those sales were made at the market prices?

A. Yes, the prices were satisfactory to me at the time they were made.

Q. You stated that once, but you can't say they were the market prices?

The Master: Suppose those were not the market prices, and suppose that during the entire period covered by these transactions, his agents stole from him, and he really got less than he ought to have gotten, but through no fault of his, would that render the evidence admissible?

Judge Hammond: I don't admit they are correct.

Q. (By Col. Brewster): You sold your goods and that is an account of the sales?

A. Yes, sir.

Q. (By Judge Hammond): Those are accounts sales of N. Boynton & Co.?

A. Yes, sir.

Q. They are co-defendants in the original case by virtue of their being owners of stock in the West Point Manufacturing Company?

A. Yes, sir.

Q. How much stock do they own in the West Point Manufacturing Company?

Col. Brewster: I object to this testimony. I will ask how N. Boynton & Co. are regarded in the commercial world?

Judge Hammond: I object to that.

Q. Mr. Lanier, do those papers contain all the money that the Galeton Cotton Mill got for the sale of its product of every kind and character?

A. Yes, sir; unless it was some small sales that were made at the mill.

Q. Where will those sales appear?

A. On the cash account.

The account sales referred to, and about which the witness was examined, tendered in evidence, and marked with the name of the stenographer and the date, February 16, 1897.

* * * * * * *

The journal and ledger are introduced in evidence by the respondents, and identified by the name of the stenographer and the date, February 16, 1897.

* * * * * * *

Judge Hammond: We ask that the books be impounded.

The Master: You will turn the books over to the Clerk. (February 17, 1897).

All the books and papers which have been identified were offered in evidence and allowed.

Judge Hammond: I desire to have exception noted to all the rulings against me on the admission of any books and papers.

* * * * * * *

Judge Hammond: We ask that the Court require the books returned that were taken away.

The Court: Counsel complains that the journal and the ledger have been taken away and ask that they be turned over. I ask that

they be turned over to Mr. Seab. Smith, stenographer, to be delivered to Mr. D. O. Smith.

Col. Brewster: They are all here.

May 5, 1897.

Condensed printed record or extracts from record on *certiorari*, pp. 188–193.

EXTRACTS FROM RECORD, VOL. 3, OLD NO. p. 1506, NEW NO. p. 1720.

(Cross-Examination by Judge Hammond.)

Q. Who kept the books of the Galeton Cotton Mills, Mr. Lanier?

A. Mr. Winston kept the cotton books; Mr. Higginbothem kept the cloth production book; my firm kept the in town, and the treasurer kept his books.

Q. Who was the treasurer?

A. H. S. Sears.

Q. Who made out the account sales?

A. The selling agents.

Q. Who were they?

A. N. Boynton & Co.

Q. What individual made them out, the account sales? Would you know by looking at the accounts?

A. I don't know.

Q. Do you know by looking at the handwriting?

A. No sir; I do not.

Q. Wasn't it H. S. Sears?

A. I don't know; I would say at a guess, it was not him. It don't look like his handwriting?

EXTRACT FROM TESTIMONY OF JAS. S. HAMILTON, EXPERT ACCOUNTANT AND WITNESS FOR MOVANT.

Vol. 3, Old No. p. 1567; New No. p. 1781.

(Direct Examination by Judge Hammond):

Q. What else have you figured on in connection with these books besides what you have stated as to the result of those books?

A. The only thing I could check was cotton; I have checked the cotton.

Those books, there was nothing but a Journal and Ledger; there was no pass-book; there was no day-book; there was no book of original entry; no stock-book, and no cash-book.

Q. Is a Day-Book an essential book?

A. It is absolutely essential.

Q. Can you get at the actual results without a Day-Book?

A. You cannot check a Ledger and Journal without a Day-Book and a Cash-Book to check against. You have nothing to check against.

Q. Do those books constitute a full set of books?

A. They do not.

Q. What else is omitted besides a Day-Book?

A. A Cash-Book and Stock-Book.

* * * * pp. 1568 (01, p. 1782, New No.).

Q. Those books of N. Boynton & Co.; have you examined those books?

A. I did.

Q. I will get you to state whether or not, in your judgment, those are original books of N. Boynton & Co., and if not why would you say not?

A. I should say not.

Q. Why not?

A. Because, there is not a check-mark on them, showing where they have been checked over; nor a check-mark to show where they have checked to get a trial balance, and besides the books are perfectly clean.

Q. There is no appearance of use on them at all?

A. No, sir.

Q. Could books of that kind be kept without showing use?

A. No, sir; to go over a period of that length of time I should say they could not.

Condensed printed record or extracts from record on *certiorari*, pp. 188–194.

EXTRACT FROM TESTIMONY OF JAS. S. HAMILTON, EXPERT ACCOUNTANT,—WITNESS FOR MOVANT.

(Vol. 3, p. 1577 (Old No.); p. 1791 (New No.).

(Direct Examination by Judge Hammond):

Q. Compare the handwriting of the Accounts Sales with the handwriting on the books of N. Boynton & Co., or on the Accounts Sales of N. Boynton & Co. with the book that I hand you, and state whether or not they are in the same handwriting.

A. I have examined them, and, with some exceptions, the Accounts Sales are in identically the same handwriting that there is on the books.

Q. On this Journal?

A. Yes, sir.

Q. And the same is true of the Ledger?

A. Yes, sir; the same thing is true.

Printed record on *certiorari*, p. 194.

EXTRACT FROM RECORD, VOL. 3, OF HEARING HAD BEFORE MASTER, JULY 12, 1897.

Old Nos. pp. 1634–1637.
New Nos. pp. 1848–1851.

Judge Hammond: We want to offer evidence to show that the books offered are not the original books of the Galeton Cotton Mills.

Col. Brewster: We object to the evidence offered.

The Master: I will let you introduce such evidence.

J. M. Chilton, sworn for movant, testified:

Direct examination by Judge Hammond:

Q. Did you discover anything from the internal evidence of these books going to show whether or not they are the original books of the Galeton Cotton Mills, commencing in 1892?

A. Yes, sir.

Q. Show the court the physical evidence in these books and state what it is and exhibit it to the court.

A. The age of the books as shown by a large part of the paper contained in the bound volume was manufactured after the date of the accounts set out in the book.

Q. What is the date of the manufacture of that book; the date of the paper?

A. The date of the manufacture of the paper that is in it as shown by the water-mark on the pages, these here are 1892 (indicating), and other portions of the same volume are 1894.

Q. Turn to a page that has a water-mark of 1894, and exhibit it.

A. Page 209 and a number of other pages.

Q. Turn to page 209.

A. That is simply one of a number of pages in the same book.

Q. Let us see the water-mark on page 209. (Exhibiting page of book.)

Judge Hammond: I exhibit to the master the water-mark on page 209 (reading) "Linen Ledger, 1894."

The witness: The same water-mark appears on page 211, and on a great many other pages on the same book.

Q. The same water-mark, 1894?

A. Yes, sir.

Q. What is the date of the first entry on that book?

A. September 27th, 1892.

Q. Do you find anything on the other book, the ledger, of similar import?

A. Yes, sir.

Q. Refer to a page of that and give us the water-mark.

A. The water-mark on all paper in this ledger, so far as I have investigated it, a large number of the sheets, I know, shows the date of the ledger as 1893, on page 107, for instance, of the ledger, and there are a great number of others.

Q. How did your attention come to be called to the water-mark on the paper of this book?

A. I was examining the book and I happened to notice there was a water-mark, and I put it between the light and saw the date of the manufacture.

Q. You discovered that during the last week?

A. I discovered that last Saturday.

Judge Hammond: We renew our motion to exclude those books.

Col. Brewster: We have predicated the book on the fact that there was a voucher to sustain ever entry; our case is predicated on the ground that we have produced the original vouchers.

The Master: I will report under the evidence that they are not the original books of the Galeton Cotton Mills. I will let them come in as memorandum, accompanied by the original vouchers. If the vouchers do not sustain them I will exclude them; I think that will operate to take the books out as original evidence. I would not be authorized to take those books as evidence in the case.

Judge Hammond: It appears they are not original evidence; they are not the original books, and copies are not admissible; we are entitled to the original books. We have now offered proof showing they can't be the original books of the Galeton Cotton Mills, and the gentlemen ought to bring the original books here. We did not ask for the production of the original books, have never asked for them, and they have not produced the original books.

The Master: They have tendered a number of original vouchers; the contention is, that the sum and substance of those vouchers are

reflected by those books, and are shown by those books, and when I come to make up my report, if there is an entry not corroborated by the original vouchers, I will reject them. I will hold under the evidence that those are not the original books. I think those two books, *per se*, have no probative value.

Judge Chilton:

I have a motion to make: We move, if the court please, to exclude the vouchers (accounts of sales) put in evidence as having come from Boynton & Co., selling agents; first, on the ground that there is no independent evidence that those vouchers are correct, and, second, that no witness has testified to the truth of the facts disclosed by those vouchers.

The Master:

For the present the motion is overruled. I will hear from you in the argument of the main case, and if I am convinced I am in error will reverse my ruling.

Printed record on *certiorari*, pp. 196-199.

EXTRACT FROM TRANSCRIPT OF RECORD, VOL. 3, OLD NO. 1362; NEW NO. 1578.

(February 16, 1897.)

TESTIMONY OF L. LANIER (witness for respondent).

(Direct examination by P. H. Brewster):

Q. I will get you to state to the court the extract financial result of the operations of this mill for three years and a half; the period it was operated by the Galeton Cotton Mills from the first sale to the last.

A. The stock we had on hand on the 30th day of April, 1896, was estimated at 11½ cents per pound, and that leaves a loss in the operation of the mill for that time of $4,654.60. We estimated the goods on hand and get that result.

Q. By the Master: For what period of time?

A. From September 19, 1892, to April 30, 1896.

Q. That covers the entire period?

A. Yes, sir.

Q. That was a loss?

A. Yes, sir; $4,654.60.

(Direct examination by P. H. Brewster):

Q. You had some statements you had prepared as to the financial status of the Galeton Cotton Mills, referred to in your last answer; have you got those statements so you can hand them to the court?

A. Yes, sir. (Exhibiting papers.)

Col. Brewster: We tender in evidence these statements.

Q. You answered and gave the figures as to its condition when you were examined heretofore?

A. These (referring to papers exhibited) are more in detail. Here are the statements of receipts and disbursements showing the condition of the company.

Q. What is the first paper; just state so we will understand it.

A. I have compiled the production of the Galeton Cotton Mills. This (referring to statement) is the production by fortnights of the Galeton Cotton Mills. These sheets I have marked Nos. 1, 2, and 3; they also give the total production.

Q. From what period to period?

A. From the beginning, from our first return made September 30th. We bought the property on the 5th, received the title on the 16th, and this is our first production as returned on September 30, 1892.

Q. These sheets are numbered how?

A. 1, 2, and 3, and this ends April 30, 1896.

Q. That was after the last sale?

A. Just prior to the last sale.

Q. That wound up the entire period of time?

A. Yes, sir; those sheets are the production of the Galeton Cotton Mills from September 30, 1892, to April 30, 1896.

The papers exhibited and testified about are identified with the name of the stenographer and the date, May 4, 1897, and numbered consecutively, 1, 2, and 3, on the back thereof.

Q. What is that (exhibiting paper)?

A. That is a statement showing the cotton purchased, the aggregate for the same period.

Q. Does it give the price?

A. Yes, sir; the amount and the total dollars and cents.

Q. What period does that cover?

A. The same period.

Q. Is there one or two sheets of that?

A. Only one.

The paper testified about is identified with the name of the stenographer and No. 4, May 4, 1897, written on the back thereof.

Q. What is that paper (exhibiting paper)?

A. That is a sheet showing cotton opened and the production, and cost and sales.

The paper testified about is identified with the name of the stenographer and "No. 5," May 4, '97, written on the back thereof.

Q. What is the next paper (exhibiting paper)?

A. This is a statement of the receipts and disbursements of the Galeton Cotton Mills covering the same period.

The paper testified about is identified with the name of the stenographer and "No. 6," May 4, '97, written on the back thereof.

Q. Does that show the financial condition at the close of the administration of the Galeton Cotton Mills about which we are inquiring?

A. Yes, sir.

Q. From the beginning to the end?

A. Yes, sir, from beginning to end.

Q. When you were on the stand months ago you were asked if you ever checked the entire matter to ascertain the correctness of your own personal knowledge? At that time you said you had checked about a year and a half. I will ask you if you have since checked the remainder?

A. I have since checked it on through.

Q. State to the court if you have checked the entire business of the concern and know that it is correct?

A. Yes, sir, I have.

Q. You have checked it all?

A. Yes, sir.

Here the witness offers "duplicates" (unsworn and unidentified) for the missing "vouchers," so called, as itemized on pp. 1413–5, old numbers, and 1627–9, new numbers.

Q. Do you not know the amount represented by those absent receipts were paid?

A. Yes, sir; I know they were paid; our books show it.

Judge Hammond: I object to the statement that the "books show it." The best evidence would be the books themselves.

The Master: I sustain the objection and rule out that part of the answer that the books show those facts.

Judge Hammond: I have a further objection, but will make it on the cross-examination.

Q. During the time covered by your testimony, who drew the checks originally?

A. I bought the supplies and findings for this mill during the entire time, and I paid for them with check on the treasurer of the company or on W. C. & L. Lanier, who were the bankers for the concern.

Q. You know those items about which you have testified were really paid?

A. Yes, sir; I do. There are 8 items here I have not produced vouchers for, which I can get.

By the Master: Do you know the amounts were paid independent of the vouchers?

A. Yes, sir; I do.

Q. I will ask you whether or not you checked those statements you have testified about; whether or not you checked them all through yourself?

A. Yes, sir; I did.

Q. And they are correct?

A. Yes, sir; they are correct.

Colonel Abbott: We offer these statements and offer these duplicate vouchers in evidence, and also ask the privilege of supplying those 5 or 6 missing vouchers as soon as we can get them.

Judge Hammond: I object to the statements because it don't appear that he made them. He says he checked them from the books. If those statements are made by him as an expert, and he has gone through and made them as an expert, they are admissible, otherwise not. I don't think they have shown that he has done the work, and that it is correct.

The Master: As I understand it, those statements are condensations of what the books show through a series of years.

Judge Hammond: I object to all those papers because it don't appear that he made them out himself. He says he checked them up.

(By the Master): What do you mean by "checked them up?"

A. I checked the items on the books with the vouchers that we have presented, and I had bought the items that the vouchers covered, and that the books show were paid for.

Q. Do you know anything about books?

A. Yes, sir; I have had to do with books all my life.

Q. Is your experience in going over books and keeping books sufficient to enable you to go over a set of books and see whether they are right or not?

A. Yes, sir; it is.

Col. Abbott: I offer the papers in evidence under that statement.

Cross-Examination by Judge Hammond:

Q. Mr. Lanier, take this first paper introduced, the "Production of the Galeton Cotton Mills, Sheet No. 1, September 30, 1892"; you gave there the number of pounds, then the total pounds, and

then yards. Are those figures the result of a calculation or the result of just what appears on the books, copy of what appears on the books?

A. That is compiled from the superintendent's reports put in here in evidence in this cause.

Q. That is not taken from the books, but from those detached separate papers?

A. The superintendent made out his reports, and I compiled it from the reports. He compiled his reports from his books.

Q. Those papers put in as superintendent's reports were taken from the books, and this is taken from those reports?

A. Yes, sir.

Q. Did you make it?

A. This is merely copy of the report which I compiled. I compiled it.

Q. And those are compiled from the superintendent's reports?

A. Yes, sir.

Q. The superintendent's reports show these identical figures?

A. Yes, sir.

Q. Have you checked every one of those items with the superintendent's report, item by item?

A. Yes, sir.

Q. Did you put your check-marks on here?

A. I checked it from the other sheets, and these are rechecked.

Q. Where did you put your check-marks; on this paper?

A. I checked over the original paper which I made out every item.

Q. Only those numbers where the check-marks are those that have been checked?

A. All were checked, but this has been rechecked.

Q. Did you check them all, every figure?

A. Yes, sir; originally.

Q. What I am trying to get at is whether all of those figures were checked by you?

A. This paper was checked by the man who copied this statement. I gave him the sheets that I had compiled from the reports and pay-rolls of the superintendent, which are on file, and he made up this.

Q. Do you mean to say that this is another man's work, and that you did not check it?

A. I checked the original, but I did not check this to see whether this corresponded with my original paper. This was made up; copied by my book-keeper.

Q. Where is the original where you checked?

A. I have not got it with me.

Q. Where is it?

A. I suppose it is in my office.

Q. Were these copies made from the originals?

A. Yes, sir.

Q. Who made them?

A. Mr. Freeman, our cotton man.

Q. Do you mean the original reports?

A. The original document is the superintendent's report; I made up those papers from the superintendent's reports; then those are more decent copies of the instrument made out by me, but contain exactly the figures as the others.

Q. Who made the original, you?

A. Yes, sir.

Q. You made the original out?

A. Yes, sir.

Q. Yourself?

A. Yes, sir.

Q. This is a copy you made from that?

A. No, sir; I had it made.

Q. Have you compared it, item by item?

A. No, sir; I had the man to take the original and make that from it.

Q. Who did that?

A. Mr. Freeman; those are Mr. Freeman's figures.

The Master: Why not let those papers go in as a memorandum? Just let it be identified and let it go in as a memorandum in the case, and turn it over to Judge Hammond and Mr. Huguley and let them verify it if they desire to do so.

Judge Hammond: I think the figures made by an expert would be original evidence, expert evidence; it is frequently done; I want the expert here who done this work, and want him to testify that it is correct.

Col. Abbott: I want to say this, that the superintendent's reports are in as original evidence, they were sworn to, every one of them, as being correct. We offer these papers in connection with the others in order that some conclusion may be arrived at without taking the balance of human life to do it.

Old No. 1420.

New No. 1634. May 4, 1897.

L. Lanier resumed the stand, testified:

Discussion was had as to the admissibility of the papers testified to by the witness as having originally been compiled by him and copied by Mr. Freeman.

The Master: There are some books of original entry and some original vouchers that are already in, and Mr. Lanier, as I understand it, abstracted from the books and vouchers certain data which have been verified by him, and I have ruled that they might go in as memoranda and that I would verify it; they would not go in as original evidence.

The witness: I checked the footings, but the different items making the footings I did not check them.

Q. (By Judge Hammond): Did you make these footings yourself?

A. I made the footings on the original paper.

Q. Did you make them on the copy?

A. I did not, but I checked the footings on the copy and they corresponded with the one I did make.

Q. (By Col. Abbott): Have you compared the footings with the paper you made?

A. Yes, sir; I have.

Q. Did they correspond?

A. They correspond; they agreed; I compared themtand they agreed.

The Master: I will let in the papers with the understanding that if it is not admitted to be correct Mr. Smith and myself will undertake to verify it.

Q. Mr. Lanier, you state this mill lost a certain amount of money during that entire period—the entire operation; how do you know it lost that much money?

A. The results show it.

Q. The results of the operation of the mill; is that result calculated from the books?

A. Yes, sir.

Q. Who made that calculation from the books; who went through the books and made that calculation that shows that loss you have testified about?

A. That is made up from the books of the company.

Q. What individual went through the books and made that calculation?

A. I made it up from the difference realized for the goods, the proceeds of the goods, and the cost of making and marketing them; the cost was that much above the proceeds.

Q. My question was, who was it went through the books and made the calculation which shows this loss; did you do it?

A. I assisted in it.

Q. Didn't you have it done by somebody else?

A. A good deal of the clerical work is done by other people. don't do it.

Q. A good deal of the adding and calculating was done by othe people?

A. Yes, sir.

Q. You didn't do all the work that was done on those books?

A. No, sir.

Q. You swear to that amount of loss, that it is correct?

A. Yes, sir; and to the best of my knowledge and belief it is.

Q. To the best of your knowledge and belief, you say?

A. Yes, sir.

Q. Do you know it of your own knowledge?

A. I am entirely satisfied with it.

Q. You are satisfied those figures are correctly made by the pa ties you employed to make them?

A. Yes, sir.

Q. You are satisfied those figures are correct?

Q. You don't state they are correct of your own knowledge, b cause you made them?

A. They are correct from our receipts and expenditures; the co of the goods and receipts from goods shows that to be the corre amount of loss.

Q. You didn't make the calculations from which those figures a made up?

A. The account sales are made up from the sales and the n proceeds are shown on all accounts sales.

Q. Who made up those account sales?

A. The selling agents.

Q. Who set down the figures and made up those figures of tho sales?

A. I figured on all of them.

Q. Did you figure them yourself?

A. Yes, sir.

Q. How did you figure it, by taking the figures given you b others?

A. Largely by figures made by others.

Q. Explain what you mean by that?

A. We have to take the Pay-Rolls, Cost of Cotton, Supplies an Findings, incidentals, make up the total cost, and take the pr ceeds of the goods from the cost. Those figures are made up b others under my supervision.

Q. You have those figures made by others?

A. Yes, sir; most of them are.

Q. You could not devote enough time to do all that?

A. No, I could not make all those figures.

Q. This result is arrived at by you from taking the results of figures made by others?

A. Yes, sir.

Judge Hammond: I move to rule out the testimony of this witness that there was a loss by reason of the operation of this mill.

The Master: I will let it remain in for the present.

The ruling is accepted to.

Q. (By Col. Brewster): I would like to ask the witness a question right here. Didn't you verify all those figures?

A. Yes, sir; I did.

Q. You say you verified everything; how did you very it? Did you go over the calculations made by those people to see whether the calculations are correct?

A. It is not so much the calculations as the correctness of the figures showing the cost of the goods and the amount received, the proceeds of the goods.

Q. There had to be additions?

A. Yes, sir; the same as in all business of that magnitude. There had to be a great deal of it.

Q. Did you make all those additions yourself?

A. I either did it or had it done.

Q. Did you do it yourself?

A. Largely, I did.

Q. Did you do all of it?

A. Not in every instance. I don't know that I did that. I did it largely myself.

Q. Unless you know those additions are correctly made, you can't state this result is correct, can you? If the men you got to do the word did or did not do it correctly, you would not know that without checking up the work?

A. No, but I may have had some one else to do it and verified it in that way.

Q. Did you do that work yourself?

A. I very often did all that, but at times I may not have done it, and had some one else to do it.

Q. It took a great deal of figuring to get that result?

A. Yes, sir.

Q. How long did it take to do, and how many men did you have employed on that work?

A. There were three or four of us to do the work.

Q. How long did it take three or four of you to do the work?

A. It is brought up daily almost.

Q. In figuring for this testimony to get out this result, for this testimony you figured it out to get the result?

A. I only compiled it.

Q. You made it up for this record?

A. I had the figures already made. They are made as matter of fact every six months. We close our books every six months.

Q. You just took those semi-annual statements and made your statement from them?

A. They are all re-checked when the six months expire. At that time we check them up, and close our books, etc., etc., etc.

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EXTRACT FROM TRANSCRIPT OF RECORD, VOL. 3, OLD NOS. pp. 1387–88. NEW NOS. pp. 1600–1.

Judge Hammond: I will give notice of another motion to exclude Mr. Lanier's evidence, on the ground that he used a memorandum which he has not filed.

Col. Brewster: We are going to file it.

Judge Hammond: I ask that it be filed with the stenographer.

The Court: If you will indicate what it is, I will order it filed.

Judge Hammond: The testimony of Mr. Lanier on the 16th day of February. He was examined then, and he gave from a memorandum the amount of cotton consumed from September, 1892, to May, 1896—5,278,429 pounds.

The Court: All that is on file. The stenographer has it down and has the book.

Judge Hammond: I move to rule out the evidence given on that day by Mr. Lanier, on the ground that it was read from the memorandum.

The Court: The motion is overruled.

Judge Hammond: I will ask you to certify that he did testify from the memorandum on that day. It does not appear in evidence that he was testifying from a memorandum. I ask that it appear in the record that he was testifying from a dozen sheets in his hands.

The Court: I do not know what part he testified independently and what part he refreshed himself by memorandum. He gave a good deal of independent evidence.

Printed record on *certiorari*, pp. 199–210.

XV.

The master's interpretation of the rule of responsibility of a mortgagee in possession, holding that "wilful default," meant fraud or wanton misconduct, and not "ordinary and reasonable diligence," was apparent in all of his findings. This was the gravamen of petitioners' exceptions in the court below, and was the complaint in the Circuit Court of Appeals. The Circuit Court of Appeals misinterpreted and misconstrued the position of appellants, and decided this point upon the ground that the appellants wished to apply to the complainants some other or different or stricter rule than that of a mortgagee in possession. This action of the master and the court resulted in the rejection of claims of petitioners exceeding $170,000.

A mere inspection of the authorities shows that the words "wilful default" mean "want of reasonable diligence," and that the two expressions are used as the equivalents of each other.

In Daniell's Chancery Practice, 1237, it is said:

"Sometimes instead of the words 'without his wilful default' the words 'with ordinary care and diligence' are used."

Most of the cases use the terms "with ordinary care and diligence," or "reasonable diligence."

Brickell's Digest, Vol. III, 657.
2 Daniell's Ch. (6th Am. Ed.), p. 1239.
Miller *v.* Lincoln, 6 Gray, 556.
Hughes *v.* Williams, 12 Ves. 493.
Benham *v.* Rowe, 2 Cal. 387.
Schaeffer *v.* Chambers, 2 Halst. Ch. (N. J.), 548.
2 Jones on Mortgages, Sec. 1123.
Strong *v.* Blanchard, 4 Allen, 538.
White *v.* Atlas Lumber Co., 68 N. W. Rep. 359.
Richardson *v.* Wallis, 5 Allen, 78.

The rule of diligence as established by the U. S. Circuit Court of Appeals, fifth circuit, which became the law of the case in the accounting for rents and profits, etc. (See 72 Fed. Rep., p. 712):

"The Circuit Court having decreed that the defendants were entitled to restitution on condition, which decree was not fully executed because the condition was not met, and having decreed a foreclosure and sale of the property will, of course, have an account taken of the proper receipts and disbursements incident to the cus-

tody and operation of the mortgaged property and of the rents and profits *earned, or that should have been earned*, since its delivery to the purchasers under the former sale, and make such further orders, etc."

ORDER OF REFERENCE TO SPECIAL MASTER (IN CONFORMITY):

It is ordered that this case be referred to Thomas B. Felder, Esq., for the purpose of "taking an accounting of the proper receipts and disbursements incident to the custody and operation of the mortgaged property, and of the rents and profits *earned, or that should have been earned*, since its delivery to the purchasers under the former sale; and to ascertain whether there has been any conversion of the property connected with said property, and the amount and value of the same; as to whether there has been any waste or damage to the property, and as to whether the same is the result of ordinary wear and tear; and as to the liability of the holders of the property therefor."

This March 16, 1896.

(See condensed printed record (on application for *certiorari*), p. 69).

Referring to the rule of liability or diligence as expressly set forth in the orders quoted on preceding page, both of the Circuit Court of Appeals, fifth circuit, and also of Judge Newman, in conformity, it should be noted that Mr. Justice McCormick, who wrote the opinion in the Court of Appeals, employed the following significant and strong language in the same connection:

"This property was a large and going factory, for the manufacture of cotton goods, employing many operatives, carrying a considerable stock of "Quick Assets," *requiring competent, careful, and responsible handling.*"

72 Fed. Rep. 708.

So excellent an authority as Snell's Equity (American Notes by Lawson), define the terms, as follows: "Gross and wilful negligence"—tantamount to "*Fraud.*"

See Hewitt *v.* Loosemore, 9 Hare, 458.

"If there be 'Wilful default or gross neglect' as to making repairs, the mortgagee is accountable. Need not show actual '*Fraud.*'"

Russell *v.* Southard, 12 How. (U. S.) 139.

2 Halst. Ch. (N. J.) 557.

In Hughes *v.* Williams, 12 Vesey, Jr., 493, it is said:

"Mortgagee in possession, though answerable, beyond fraud, for *wilful default*, is to take the fair rents and profits, not bound to engage in, and will not be allowed for speculation and adventure."

In the note to this case, it is said:

"By taking possession, the mortgagee imposes upon himself the duty of a 'Provident Owner,' and he is bound to recover what such an owner would, with 'Reasonable Diligence,' have received."

Again:

"A mortgagee personally in possession is responsible for 'reasonable' rent," citing:

Bainbridge *v.* Owen, 2 J. J. Marsh, 465.

The Lord Chancellor (Erskine) stated as follows:

"I do not mean to say that, to charge a mortgagee in possession, '*actual fraud*' is necessary. It *is sufficient*, if there is *plain*, *obvious*, and *gross* negligence, by not making use of facts within his knowledge, so as to give the mortgagor the *full benefit* that the mortgagee, in possession of the estate of the mortgagor, ought to give him. If, for instance, the mortgagee turns out a sufficient tenant, and having notice that the estate was underlet, takes a new tenant, another person offering more. * * * I agree to the principle that has been stated by the Attorney-General, that it would be dangerous to say the mortgagee is not answerable except for *fraud*, and it would contradict many decrees, etc."

In Hilliard on Mortgages, pp. 418–9, it is said:

"If the mortgagee himself occupies he is accountable for the *utmost* value the land would have produced, with ordinary care, exclusive of taxes and repairs; but if he enters into receipt of the rents, only after the rate of the rent reserved."

So, also, in Lord Trimleston *v.* Hamill, Ball & Betty's Ch. Rep., Vol. 1, p. 175, it is held:

"If the mortgagee enter into possession of the lands, he must account at their *utmost* value; he is always charged with the *utmost* value they are proved to be worth, etc."

It is clear from the tone of the report and the rulings of the master that he did not use the terms as indicating a mere want of ordinary

care and diligence, but used it in the sense of "fraud"—that the accounting parties were liable for only what they "actually earned" instead of what they "should have earned," because they had been guilty of no fraud.

The master, in his report, shows what he meant by "wilful default."

In disposing of two claims involving over $150,000.00, to wit, overcharges on cotton bought and undervaluation of goods sold, he says (Rec., p. 95):

"Indeed, in regard to the claim of overvaluation of cotton bought, and undervaluation of goods sold, the undersigned thinks that the movant must stand by the actual results until he can show that those results are materially different from what they should have been, and that they were brought about intentionally *or by neglect so gross as to amount to wilful default.*"

Conclusive and overwhelming proof was adduced before the master that the prices charged for cotton used in the mill were above the market price, and the prices realized for the sale of the product were below the market price.

The record of this mill, in the hands of its previous owners, and the testimony of five experts, showed that this mill had averaged for a period of years and ought to have earned at least $40,000 per annum.

All of this testimony was ignored by the master on the ground that there had been no "wilful default," or, as he defined it, no "negligence so gross as to amount to wilful default."

XVI.

The deduction by the master of $4,654.60, *with* $469.72 *of interest thereon, from the aggregate allowed petitioners, as a net "loss shown by books" of Galeton Cotton Mills during their operation of petitioners' property for three and two-thirds years, was absolutely without warrant of law or fact to support it. This error was specially assigned as one of the exceptions to the master's report in the lower court, but the exception was overruled without consideration thereof by the court. It was again specially assigned as error in the Circuit Court of Appeals, and was there again ignored by the court, which amounted to a denial of justice by said court.*

The above proposition proves itself when it is remembered, first, that the books of the Galeton Mills were not in evidence; second,

that the testimony of Lanier as to what the books not in evidence showed on this point, was based on a statement made up from these excluded books, not by himself, but by somebody else; third, that respondents could not be made to pay a sum claimed to have been lost by the mortgagees in the operation of the mill.

An inspection of the opinion of the Circuit Court shows that the exception on this point to the master's report was ignored. The Circuit Court of Appeals did likewise.

XVII.

The only justification in law or equity which the courts below could bring forward for the refusal to stay the sale of defendants' property until an accounting could be had for rents and profits, and for confirming said sale when made, was that the rents and profits belonged to the Huguley Manufacturing Company and were not applicable to the payment of the mortgage debt, for which that company was not personally bound. Therefore, after having refused to postpone the sale, and after confirming it when made, it was error for the court to apply the amount found in favor of the Huguley Manufacturing Company for rents and profits to the satisfaction of an alleged balance on a decree rendered only against The Alabama and Georgia Manufacturing Company.

This proposition is self-evident. If there were no right or equity to stop this sale until it could be sold only for the amount actually due on the mortgage, by the application thereto of the amounts due by the holders of the mortgage bonds for years of rents and profits of the mortgaged property, then such want of right or equity could arise only out of the fact that the Huguley Manufacturing Company, who was not personally bound for the mortgage debt, against whom no decree had been sought or rendered for the debt, was the sole owner of such rents and revenues, and that they were not applicable to the payment of the mortgage debt.

One or the other horn of the dilemma must point the truth.

If the rents and profits were applicable to the mortgage debt, then it was a gross wrong and inequity to sacrifice defendants' property under a decree for more than was due on the mortgage.

If the rents and profits were not applicable to the mortgage, then it was proper for the court to refuse to stay and to confirm the sale, but it was wrong and inequitable to apply rents and revenues to the payment of the deficiency due on the mortgage after the sale, under a personal decree against the other party defendant.

XVIII.

The Huguley Manufacturing Company, having been made a party defendant only to bar its equity in the mortgaged property, and no other decree of any kind having been entered against it, and having prevailed in its application for an accounting for the rents and profits, it was contrary to the principles of right and equity to decree against it all the costs and fees of the reference on which the accounting was had, and other costs of the cause, amounting to $4,132.00. *The action of the lower court in this regard was purely arbitrary, and was without any assigned cause or reason, and the refusal of the Circuit Court of Appeals to notice this specially assigned error amounted to a denial of justice.*

While it is true, as a general rule, that costs in equity are discretionary with the chancellor, yet "discretion is a science not to act arbitrarily." (Rock's Case, 5 Rep. 99, b.; Burgess *v.* Wheate, 1 W. Black. R., p. 123). They generally follow the decree, and "the unsuccessful party must show the existence of circumstances sufficient to displace the *prima facie* claim to costs given by success to the party who prevails."

2 Dan. Ch. Pr. (5th Ed.) 1381.

Beach Mod. Eq. Pr., Sec. 1004.

No ground was shown in the lower court why the accountants who resisted the demand for an accounting, who contested the items of their liability, who were adjudged liable to account, and against whom a large amount was found, should not pay the costs incurred in bringing them to justice.

XIX.

The decree of October 15, 1898, was grossly erroneous.

(*a*) *It permitted the purchasers to set up as the ground for non-compliance with the decree of confirmation entered two years and five months before, the very ground which defendants in vain urged as a reason why the sale should not be confirmed.*

We suggested in a previous paragraph of this brief that there was more than one instance on this record where the court had "blown both hot and cold" as to rights of these petitioners.

At the time petitioners were pleading for a postponement of the

sale, and resisting its confirmation, they set up the pending reference as to rents and profits as the ground and reason why the sale should be postponed and why it should not be confirmed when made.

The court adjudged this ground invalid for the purpose, ordered the sale and confirmed it when made.

Two years and five months later the very persons who had urged the sale and its confirmation, and had induced the court to hold that the ground set up was not valid, came back to the court and *set up this very ground as a reason why they had not complied with the order of confirmation;* and asked for essential modifications and changes in the decree of confirmation. Against the earnest opposition of petitioner the court maintained their petition.

Their assignment of errors on this matter said (Rec., p. 59):

"Appellants insist that if the pendency of said reference and absence of a report were not a valid ground, why the sale should not be confirmed, it is not a valid excuse for failing to comply with its terms, and that the court, therefore, erred either in overruling the said objections to confirmation or in holding said excuse to be valid."

Where is there any possible escape from one or the other of these propositions?

Were not the petitioners entitled to have an answer to their cry for relief from these judgments, or from one or the other of them?

Did they not involve the question of the divestiture of their title to a valuable property?

We confidently know that this court will heed our cry and give us relief.

(b) *It deprived the defendants, the Huguley Manufacturing Company, of the rents and profits of its property, possession of which had been detained by the purchasers, not only for the three years and eight months from September* 6, 1892, *to May* 6, 1896, *for said two years and five months from May* 6, 1896, *up to October* 15, 1898 *(over six years), without title, and without having complied with the terms of their purchase, and arbitrarily fixed the liability of the purchasers during that period at seven per cent. per annum interest on the balance due as the purchase price, in contravention of the jurisprudence of the circuit and of this court.*

In Chicago and Vincennes R.R. Co. *v.* Fosdick, 106 U.S. 71, this court said:

"It is the deed made to the purchaser, actually transferring the title of the parties to the suit, that terminates the mortgagor's equity of redemption."

Full compliance with the terms of the sale by the purchaser is necessary to entitle him to the deed. Until he so complies the purchase is inchoate and incomplete. The order of confirmation consists essentially of two parts: first, the approval of the court of the price bid at the sale; second, an authorization to the master to receive compliance with the bid from the purchaser to and to make him a deed. Such was the order in this case (Rec., p. 81):

"It is ordered, adjudged and decreed that said sale be and the same is hereby confirmed in all respects, and that Samuel C. Dunlap, as such commissioner, be, and he is hereby authorized and directed to convey to said purchasers all and singular the property and the property rights of every description described in said decree, *upon the purchasers complying with the terms of said sale.*"

Appellants repeat and insist that rents accruing between the day of sale and the delivery of the deed belong to the owner of the equity of redemption.

Clason *v.* Corley, 5 Sandf. 447.
Astor *v.* Turner, 11 Paige, 436.
Mitchell *v.* Bartlett, 52 Barb. 319.
2 Daniell's Ch. Prac., Sec. 1277, Note.
Jones on Mtgs., Sec. 1659.
Taliaferro *v.* Gay, 78 Ky. 496–7.
Rorer on Jud. Sales, p. 387, and cases cited.
Cheney *v.* Woodruff, 45 N. Y. 98, and cases cited by Mr. Justice Peckham, who, in the opinion, held:

"But what right had the plaintiff to this rent? He had not possession of the premises until after this term had expired, nor had he any right to such possession."
Brown *v.* Frost, 10 Paige, 247.
Rule 72, Supreme Court.

"He had not paid all the purchase money; he had no deed; until he received that, he had no title under a mortgage foreclosure, so as to claim any rent, and his claim, when he did receive the deed, was *prospective.*"
Astor *v.* Turner, 11 Paige, 436.
Strong *v.* Dollner, 2 Sandf. S. C. 447.
Clason *v.* Corley, 5 *id.* 447.
Mitchell *v.* Bartlett, 52 Barb. 319.

"As to the right to rent, it is of no moment whether the money had been paid or not, or whether the purchase-money was or was not upon interest. Such questions are all settled by the bidding, by the terms of sale; and the bids are regulated accordingly."

As pointed out, *supra*, we repeat that the very question presented by this record on this point was decided in the Circuit Court of Appeals for the fifth circuit, a year before this case was decided, in two very important cases, where large sums were involved—the revenues of a railroad. Boyle *v.* Farmers' Loan and Trust Company, and Huntington *v.* Same, 88 Fed. Rep. 930 C. C. A., Vol. 32, p. 142.

In those cases the court said:

"Neither in law, nor in equity, is the purchaser under the foreclosure entitled to the earnings of the property since the decree of confirmation, because, among other things, *he has persistently delayed complying with his bid.*"

Ought not the petitioners in this cause to have received the same measure of justice that was meted out in those cases?

Suppose the lower court in those cases had given the revenues to the delaying purchaser from the date of the bid, and had arbitrarily directed the purchaser, in lieu of surrendering revenues, to pay 7 per cent. interest on the amount of his bid from the date of the confirmation, would not the Circuit Court of Appeals have been compelled to reverse that judgment?

Were they not, therefore, compelled to reverse the judgment in this case?

Was not the rent of this large and valuable mill for over six years a real and substantial issue on which the petitioners were entitled to have a hearing, and entitled to have decided according to the jurisprudence of this court and of the very court to which appeal was made?

(c) *It permitted the purchasers to credit on their bid the ten thousand dollars, with interest from the date of the first to the date of the second sale, paid in on account of the first sale, which had been distributed in the payment of debts and claims for which neither defendants nor their property were liable, full provision having been made for all these debts and claims in the final decree by adjudging in favor of defendants that* $4,102.50 *thereof should be paid by the bondholders themselves, and that the bondholders who had received the balance of the ten thousand dollars should receive no dividend*

on these bonds until the payers of the money into court should be reimbursed the amount received on the bonds.

The purchasers at the second sale were not entitled to the deduction of the ten thousand dollars paid in at the first sale.

That sum had been disbursed in paying partly their own debts, decreed against them in the final decree of June 4, 1898 (Rec., p. 137), being the costs of the first sale amounting to $4,102.50, and partly the bonds of Mrs. Huguley, specially excluded from the benefits of the final decree of foreclosure. Full provision was made in the decree of June 4, 1898, as to these bonds and the payment thereon. See paragraph 8 of the decree. (Rec., p. 138.)

The effect of this decree of October 15, 1898, was to reverse the decree of June 4th, and to make the petitioners' property bear the burden of the costs which had been adjudged in their favor.

(*d*) *It diminished the price of the sale by relieving the property from liens in addition to the price bid, laid upon it in favor of the Huguley Manufacturing Company by order of the confirmation of which liens were thereby taken off the property and charged against and made payable out of the price.*

The decree of confirmation of the sale declared a lien in favor of the Huguley Manufacturing Company on the property in the hands of the purchasers, for any amount found by the master in excess of the deficiency due by the defendants to complainants in the foreclosure proceedings.

This portion of the decree of confirmation was supposed to be a sop to the Huguley Manufacturing Company in compensation for the court's refusing to maintain its objection to the confirmation of the sale.

The purchasers, by accepting that decree of confirmation, took it in all its parts and agreed to pay the price bid, $66,000, *and in addition to that any other sum that might be found due on the pending reference.*

In their quality of purchasers only, Lanier and his associates had no interest in the pending reference.

Central Trust Company *v.* Grant Locomotive Works, 135 U. S., p. 207.

Swann *v.* Wright's Executor, 110 U. S. 590.

Compton *v.* Jesup, 167 U. S., pp. 1–35.

If the amount found due on that reference had been $228,000,

claimed by the Huguley Manufacturing Company as having been proven in their favor up to May 6, 1896, it would still have been a lien on that property in the hands of the purchasers.

That provision in the decree was intended to give security to the Huguley Manufacturing Company for the claim it was then and is still litigating.

In addition to the sum for rents and revenues there was also found by the master, in favor of that company, a judgment for $2,500, with $894.04 interest, for property of that company taken possession of and converted by the purchasers. The court in the final decree of June 4, 1898 (Rec., p. 138), refused to set off this sum (less $750 costs) against the mortgage debt, and declared a lien on the property therefor in the hands of the purchaser. The proceeds of the sale which belonged to defendant's debtors, the mortgage creditors, could not be used to pay this debt. It was to be paid by the purchaser in addition to his bid. The court ordered the lien for this sum to wiped off the property in the hands of the purchaser and the amount thereof to be paid out of the purchase price, paid into the court. (See amendment to decree, Rec., p. 154.) It ordered all the claims of the Huguley Manufacturing Company to be transferred from the property to the fund in court, and permitted the purchaser to pay into court only $43,433.36, with 7 per cent. from May 6,1896,when the amount that ought to have been paid in to release the property (leaving out of view entirely the litigated claims for rents and profit) was $66,000, as of date May 6, 1896, with interest aggregating $77,515.54, which, together with the special award for supplies and findings (confiscated and converted by the Galeton Cotton Mills), valued at $3,658.07, principal and interest, decreed in favor of the Huguley Manufacturing Company, making a total sum of $81,173.61. It thus gave the purchasers an unencumbered title to the property for $48,433.36, with interest on $43,433.36 from May 6, 1896, when on the face of the papers they had agreed to pay a minimum of $81,173.61, *in bonds*, and *to hold the property subject to any further sum the Huguley Manufacturing Company might be awarded under the pending reference.* (See Assignment of Error XLVIII.) And this upon the assumption that the pretended sale of May 6, 1896, was a valid sale, which appellants deny, insisting that it was absolutely void for non-compliance with its express terms.

(c) *It subordinated the lien of the claim of the Huguley Manufacturing Company to the lien of the claims of the solicitors of the*

bondholders for service performed in their behalf, who, by the final decree, were given a lien only as against such bondholders, and directed payment to them of $7,000 *out of the funds paid in by the purchaser, thereby diminishing to that extent the security of the Huguley Manufacturing Company, under the same decree which relieved the property of their lien and referred it to the fund so paid in.*

See final decree, page 137, making the solicitors' fees of Dorsey, Brewster & Howell a lien only as between the bondholders. See decree on petition of Lanier for absolute deed, page 149, which orders the clerk to pay these gentlemen immediately out of the fund in court, $7,000, "the same having been by a previous decree of this court adjudged to be prior liens on said proceeds *in preference to all other claims.*" To this fund, thus diminished by the payment of the personal debt of the bondholders, the claims of the Huguley Manufacturing Company are referred.

And yet this same court, in its very first opinion ever rendered in this case, had held as follows:

"There is nothing whatever in this contract, as has been stated, providing that counsel fees of complainant should be paid in the event of a foreclosure in court, and if the same should be taxed here against the defendant, it would be increasing the amount of the mortgage to that extent in the absence of a provision in this trust deed for counsel fees, and the law requiring it to be taxed it would be placing the burden on the purchasers of the property (Huguley Company), which they did not assume and cannot be held to have assumed when they bought the property at the receiver's sale.

"The conclusion is that this is not a case where the court is required by law to tax counsel fees of the complainant, the defendant, and in the absence of any such requirement, and considering the question under the general rule applicable in courts of equity, such a case is not made, as the court would, in its discretion, give it that direction."

XX.

As to the character of the proceedings instituted in the Chancery Court of Alabama, and petition pending in this Court for Writ of Prohibition, Mandamus v. the Judge of the Circuit Court of the United States for the Northern District of Georgia, for enjoining same.

At the hearing upon oral argument, it was suggested that certain "auxiliary" proceedings had been instituted in Alabama.

Counsel for appellants (Senator Morgan) inadvertently explained the proceeding referred to as being one for "foreclosure." This was error. By way of enlightening the court—since the question was propounded—we merely now take the liberty of quoting the initial paragraph of that petition, as follows:

"Your petitioners, The Huguley Manufacturing Company, a corporation chartered and organized under the laws of the State of Alabama, and the Alabama and Georgia Manufacturing Company, a corporation chartered by Act No. 183, of the legislative acts of the State of Alabama, approved February 7, 1866, and duly organized and operated thereunder, respectfully state unto your Honors, as follows:

I. "That they are the complainants in a suit brought in the Chancery Court of the First District of the Northeastern Division of Alabama, for the purpose of *redeeming* certain property—a Cotton Duck Manufacturing Plant—from the West Point Manufacturing Company, the Galeton Cotton Mills, and the Riverdale Cotton Mills, *each* a corporation under the laws of the State of *Alabama*, and from J. J. Robinson, trustee, a citizen of the State of Alabama, which said defendant corporations are holding said property as mortgagees in possession, etc."

II. "Your petitioners further represent that they are not parties, and never have been made or served as parties to any litigation had or pending in the Circuit Court of the United States for the Northern District of Georgia, but that, notwithstanding this fact, they were served in Alabama with what purported to be process from the said Circuit Court of the United States for the Northern District of Georgia, and compelled to appear before the said court on pretended "ancillary" proceedings, based upon a previous suit which was no longer pending, and in which a decree had been rendered and fully executed for the foreclosure of the mortgage, under which redemption was sought in *Alabama* as to property *lying wholly within the State of Alabama, and from Alabama corporations*, etc., etc."

(The entire cotton mill plant having been assigned and quit-claimed by W. H. Huguley & Co. to the Huguley Manufacturing Company, of *Alabama*, as their subscription to the capital stock of said Huguley Manufacturing Company).

[See Transcript of Record on Petition for Prohibition, Mandamus, etc., pp. 1–67, and particularly petition therefor on the first nine pages of same, which presents the whole case in Alabama and Atlanta.]

For greater particularity, appellants respectfully invite the usual

careful examination by the court of the first nine pages of the petition, and of the record (only 67 pages), and the briefs of counsel filed in this connection, all of which are self-explanatory.

From these it will be observed that the suit so brought in Alabama is *not* an "auxiliary" suit, nor one of "foreclosure," but an *independent* action for "*redemption*," instituted by the owners of the equity of redemption, which said suit is now before the Supreme Court in an *independent* action to which reference is made for the record showing the facts.

XXI.

It has also been loosely suggested that the question of "jurisdiction" was only first raised in the original application filed by appellants for *certiorari*. The record, on the contrary, shows on its face that the question was expressly raised, on demurrer, by Hon. N. J. Hammond, solicitor for the Huguley Manufacturing Company, at the very outset of the case in the original circuit court.

Part I, pp. 11–12.

It is also shown on the face of the last record certified up on this appeal from the Circuit Court of Appeals, that the question of not only jurisdiction of the "*parties*," but jurisdiction of the "*subject-matter*," were both distinctly passed upon by the Circuit Court of Appeals, which, in its opinion (by Shelby, Judge) last rendered in this cause, from which the present appeal was taken and allowed, held as follows:

"1. The possession of the purchasers at the first foreclosure sale was not wrongful in the sense that such possession made them trespassers. **The decree was rendered by a Court having jurisdiction of the case.** The mortgage foreclosed was valid. The decree was binding and not subject to collateral attack. It was valid and effectual to place the purchasers in possession and to protect them in possession till it was reversed.

2 Jones on Mortgages, (5th Ed.), Secs. 1587, 1588.

"It was reversed by this court, and the circuit court then granted an order of restitution, but upon condition that the Huguley Manufacturing Company would pay into court the sum of $10,000.00 which had been paid by the purchasers at the date of their purchase.

"This court, on appeal, affirmed this condition, The Huguley Manufacturing Company did not pay the $10,000.00 and so were

not entitled to the possession by the terms of the order made by the circuit court and affirmed by this court. From its inception the possession in question was sanctioned by a decree of the court **having jurisdiction of the parties and the property."**

Record on Last Appeal, Part III, page 106 (yellow cover).

Therefore, in view of this question of "jurisdiction" not only of "*subject-matter*," but of "*parties*" having been *twice* raised and *formally* passed upon, first, in the trial Circuit Court, and latterly in the Circuit Court of Appeals, appellants now are clearly entitled in this court to assign as errors on the face of said record the respective rulings of the lower courts upon so vital a question.

The consideration of this Honorable Court upon this grave issue is now respectfully and earnestly invoked by these appellants.

XXII.

Conclusion.

In this case, therefore, the decree should be reversed, and the ne proceedings be held illegal.

If the court should agree with us that the case is one of which ne court had no jurisdiction, it should be ordered dismissed.

In event of any doubt as to jurisdictional facts, the decree ould be reversed and a hearing thereon ordered.

If not, the decree of foreclosure should be annulled and the sale t aside.

And then the party in possession who has been adjudged to represent the bondholders, should account as a mortgagee in possesion for all profits to date, and the mortgagee be permitted to pay ay balance due on the mortgage, discharge it and recover its propty.

If the court deems its jurisdiction on appeal doubtful, it now has e record before it. While the *certiorari* may have been based on appeal, it is at last merely a means of bringing up the record. orm is immaterial in this regard.

The writ of *certiorari* does not give this court jurisdiction; it is ly the process to get the record, and the record is now here perted by means of the writ of *certiorari*.

In re Chetwood, 165 *U. S.* 443, 462.

The court will therefore pass upon the merits of the case regardless of whether the case could come by appeal or should be brought up by *certiorari*.

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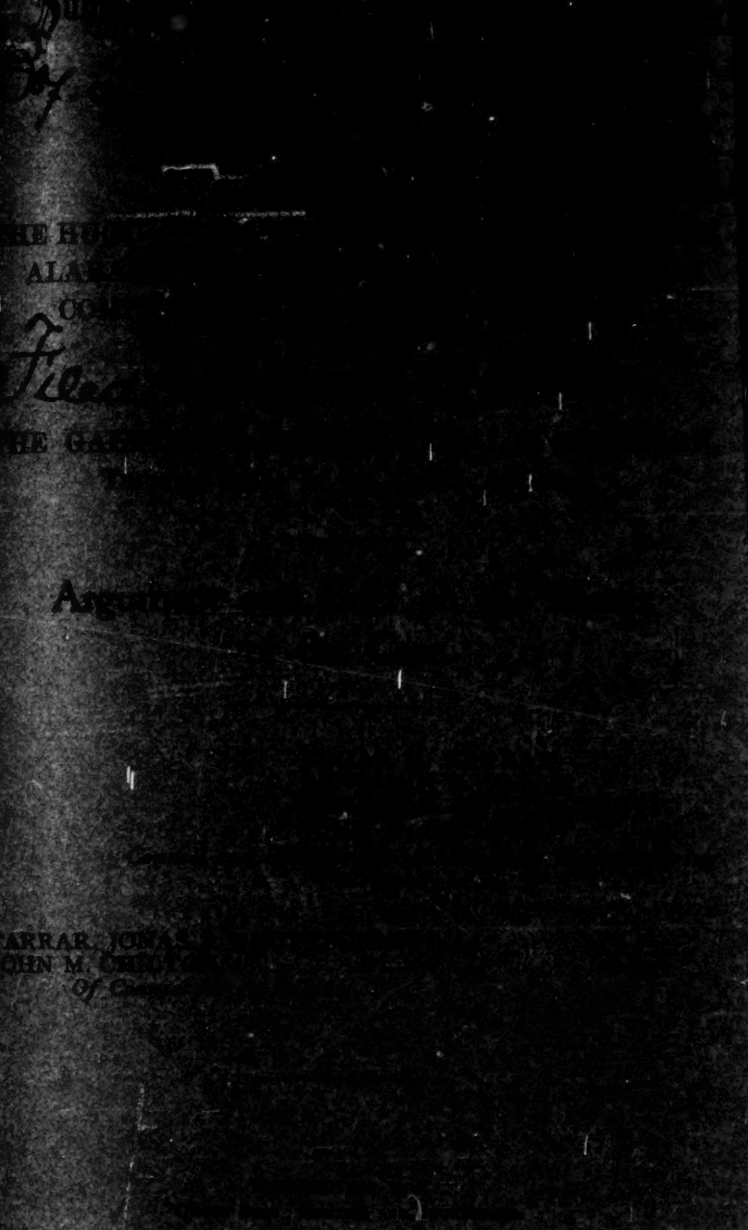

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(over six years), without title, and without having complied with the terms of their purchase, and arbitrarily fixed the liability of the purchasers during that period at 7 per cent. per annum interest on the balance due as the purchase price, in contravention of the jurisprudence of the Circuit and of this court..... 64

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The court without power, after the adjournment of its term, to change the "parties" to a sale. Deed can only be made to the original bidder or purchaser. If bidder fails or refuses to complete the purchase and payment, another person should not be allowed to take the property at the former bid..... 77

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The proceedings before the master on the reference were conducted and the report of the master was made in violation of the terms of the reference and of the seventy-ninth rule in equity prescribed by this honorable court. The refusal of the Circuit Court of Appeals to consider this assigned error amounted to a denial of justice by said court..... 78

XX.

The action of the master in admitting as evidence books and vouchers of the complainants without proof of their identity, verity or contents by those who kept the books and made the vouchers, in excluding the books when they were shown to be forged, in refusing to exclude the vouchers, and then in continuing to use the excluded books and the unproved vouchers as the basis of the accounting, was error of such a nature as to vitiate his whole report.

The refusal of the Circuit Court of Appeals to consider this specially assigned error amounted to a denial of justice by said court..... 79

PAGE.

XXI.

The master's interpretation of the rule of responsibility of a mortgagee in possession, holding that "wilful default," meant fraud or wanton misconduct, and not "ordinary and reasonable diligence," was apparent in all of his findings. This was the gravamen of petitioners' exceptions in the court below, and was the complaint in the Circuit Court of Appeals. The Circuit Court of Appeals misinterpreted and misconstrued the position of appellants, and decided this point upon the ground that the appellants wished to apply to the complainants some other or different or stricter rule than that of a mortgagee in possession. This action of the master and the court resulted in the rejection of claims of petitioners exceeding $190,000. 86–87

XXII.

Exceptions to report of master and assignments of error quoted, showing:

(*a*) Overcharge on cotton, $50,359.52;

(*b*) Cotton converted and unaccounted for, $10,338.32;

(*c*) Deficit or under-return on sales of duck, $101, 537.71.

91–99

XXIII.

The deduction by the master of $4,654.60, with $469.72 of interest thereon, from the aggregate allowed petitioners ($44,367.66), as a net "loss shown by books" of Galeton Cotton Mills during their operation of petitioners' property for three and two-thirds years, was absolutely without warrant of law or fact to support it. This error was specially assigned as one of the exceptions to the master's report in the lower court, but the exception was overruled without consideration thereof by the court. It was again specially assigned as error in the Circuit Court of Appeals and was there again ignored by the court, which amounted to a denial of justice by said court..... 99

XXIV.

The record on its face shows that the cost of this property was $350,000.00, its insurable value $250,000.00, and net earnings of the mill, covering a period of ten years immediately preceding its surrender to incumbents had, under the Huguley management, earned net profits of over $40,000.00 per annum, average, and for the period of accounting taken up to May 6, 1896, "should have earned," according to the evidence adduced by numerous expert witnesses for the Huguley Manufacturing Company, the sum of $228,000.00..... ... 100

XXV.

Summary 101

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 94.

THE HUGULEY MANUFACTURING COMPANY, THE ALABAMA AND GEORGIA MANUFACTURING COMPANY, AND WILLIAM T. HUGULEY, *Appellants*,

versus

THE GALETON COTTON MILLS, J. J. ROBINSON, TRUSTEE, AND L. LANIER, *Appellees.*

ARGUMENT AND BRIEF ON THE MERITS OF THE CASE.

EDGAR H. FARRAR,
BENJAMIN F. JONAS,
ERNEST B. KRUTTSCHNITT,
JOHN M. CHILTON,
Counsel and Solicitors for the Huguley Manufacturing Company et al.

The statement of the case has been so fully made in the briefs of associate counsel, assignments of error, and in the oral argument of leading counsel, Hon. John T. Morgan, that we do not deem it necessary to repeat it here.

The proceedings attacked in this application have been continuous, were finally closed by the decree of the Cir-

cuit Court of Appeals by its judgment and decree of May 16, 1899, and are all contained in the record brought up.

I.

The Supreme Court of the United States—even if under the Act of 1891 *it had no jurisdiction on appeal—now that it has authorized and required by* **certiorari**, *the record in this cause to be certified to it for its review and determination*, **has the same power and authority in the case as if it had been brought up from the Circuit Court of Appeals by appeal or writ of error.**

The appellees in this cause contend that the Supreme Court of the United States is without jurisdiction to entertain or consider the merits of this cause, on the alleged ground that because Robinson, Trustee, as plaintiff in the original bill, was a citizen of Alabama, and according to *his* method of aligning the parties, the defendant mortgagor corporation, the Alabama and Georgia Manufacturing Company, and the Huguley Manufacturing Company, the owner of the equity of redemption, were each alleged to be corporations "created under the laws of Georgia," and W. T. Huguley was "a citizen of said State of Georgia"—this, therefore, presented a sufficient *prima facie* case of "diverse citizenship" as to make the judgment of the Circuit Court of Appeals final under the statute of 1891, which provides: "And the judgments and decrees of the Circuit Courts of Appeals shall be final in all cases in which the jurisdiction is dependent entirely upon the opposite parties to the suit or controversy being aliens and citizens of the United States or citizens of different States."

Appellees overlook the further plain provision of the statute, which recites: "And *excepting always* that, in any

such case as is hereinbefore made final in the Circuit Court of Appeals, it shall be competent for the Supreme Court to require, *by certiorari or otherwise*, any such case to be certified to the Supreme Court *for its review and determination with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court.*"

This last saving clause is so clear, so explicit, as to leave no room for uncertainty or for challenging the jurisdiction of the Supreme Court which, after deliberately weighing the facts in the cause has, by its very consent and authorization, sanctioned our bringing up the complete record in the cause, and having so formally signified its acquiescence, and the record having been brought up, printed, submitted, and received, the Supreme Court undoubtedly has now the full record before it "for its review and determination, with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court."

In support of this proposition we cite:

Forsyth *v.* Hammond, 166 U. S. 506.

American Construction Co. *v.* Jacksonville, Tampa & Key West Railway, 148 U. S. 372, 383.

"The Three Friends," 166 U. S. 1.

In re Chetwood, Petitioner, 165 U. S. 443, 462.

Panama Railroad Company *v.* Napier Shipping Company, 166 U. S. 280.

Under the principles declared by this court in the case of the Panama Railroad Company *v.* Napier Shipping Company, 166 U. S., p. 280, the writ brings up the whole case for examination.

In that case, the Circuit Court of Appeals, in February, 1892, on an appeal from the Circuit Court, reversed its decree below and entered a decree in favor of the Napier

Shipping Company, declaring the Panama Railroad Company liable, and remanded the case to ascertain the damages. The District Court found the damages and entered a decree therefor. On the second appeal, taken by the Panama Railroad Company, the Circuit Court of Appeals, in April, 1894, affirmed the judgment of the District Court.

On *certiorari* thereafter taken, this court held that "while the Court of Appeals may have been limited on the second appeal to questions arising upon the amount of damages, no such limitation applies to this court, when in the exercise of its supervisory jurisdiction it issues a writ of *certiorari* to bring up the whole record. Upon such writ the entire case is before us for examination."

The judgment of this court reversed all the decrees on the record against the Panama Railroad and reinstated the original decree of the District Court in its favor, entered in July, 1891.

The allowance of an appeal removes the case into the Appellate Court in virtue of a right that cannot be denied arbitrarily. Mandamus will lie to enforce it.

Ex parte Jordan, 94 U. S. 248.

The appeal in this case from the decree of the Circuit Court of Appeals and the appeal on which that decree is based were allowed without restriction, and present the whole case on both records for review by the Supreme Court.

Chappell *v.* The United States, 160 U. S. 499.

The allowance of an appeal from the judgment of the Circuit Court of Appeals places the record of that court and the record that supports it in the Supreme Court, and all mandates in cases appealed to the Supreme Court from the

Circuit Court of Appeals are sent directly to the Circuit Courts in which the case originated under the statute.

Texas Pacific Railway *v.* Anderson, 149 U. S. 239.

In Buckingham *v.* McLean, 13 How. 150, it is said in the head notes:

"An appeal in equity brings up all the matters which were decided in the Circuit Court to the prejudice of the appellant, including a prior decree of that court from which an appeal was then taken, but which appeal was dismissed under the rules of this court."

And in the *opinion*, "the record appeal was regularly taken and perfected. By this appeal all the questions are brought before us, which were decided to the prejudice of the appellants."

In Chappell *v.* United States (decided January 6, 1896), 160 U. S. 499, it is held:

"Upon a writ of error under the Act of March 3, 1891, c. 517, §5, in a case in which the constitutionality of a law of the United States was *drawn in question*, this court has power to dispose of the whole case, including *all* questions, whether of *jurisdiction* or of *merits*."

Opinion by Mr. Justice Gray:

"* * * But no question of jurisdiction having been separately certified or specified, and the writ of error having been allowed, *without restriction or qualification*, this court, under the other clause of the statute, above cited, has appellate jurisdiction of this case as one in which the constitutionality of a law of the United States was drawn in question; and, having acquired jurisdiction under this clause, has the power to dispose, not merely of the constitutional

question, but of the *entire* case, including *all* questions, whether of *jurisdiction* or of *merits*."

Nishimura Ekiu *v.* United States, 142 U. S. 651.
Horner *v.* United States, 143 U. S. 570, 577.
United States *v.* Jahn, 155 U. S. 109, 112, 113.

Mr. Chief Justice Fuller ("*in re* Chetwood"), and Mr. Justice Brewer (*in re* "Forsyth *v.* Hammond"), have reviewed so exhaustively and determined so definitely the important issue involved upon this question of the power and practice of the Supreme Court to issue the writ of *certiorari*, that, because appellees seem to rely upon working our defeat through such *technical* point of *practice* rather than upon the *merits* and *equities* of the cause, we may be pardoned for here quoting freely from these two pivotal decisions which have finally settled that the *jurisdiction* of the Supreme Court to hear and determine this cause by appeal, or on *certiorari*, or otherwise, and to reach all the decrees in the case in the Circuit Court, or in the Circuit Court of Appeals, is complete, plenary and supreme.

In re Chetwood, petitioner, 165 U. S. 443, 462, decided February 5, 1897, the head notes read:

"A writ of error from this court removes a cause from a Circuit Court to this court, and it is then for this court to determine whether it may entertain jurisdiction of the cause removed, and to dispose of controversies in respect of the *form* of the writ, the parties, and the citation and service, without interference from any other court." * * *

"This court may issue writs of *certiorari* in all proper cases, and will do so when the circumstances imperatively demand that form of interposition, *to correct excesses of jurisdiction, and in furtherance of justice.*"

In the opinion of the court, Mr. Chief Justice Fuller held as follows:

"As in our opinion, the Circuit Court exceeded its jurisdiction in thus proceeding, we are constrained to make the rule absolute."

"By section 14 of the Judiciary act of September 24, 1789 (1 Stat. 81, c. 20), carried forward as section 716 of the Revised Statutes, this court and the Circuit and District Courts of the United States were empowered by Congress "to issue all writs, not specifically provided for by statute, which may be agreeable to the usages and principles of law;" and under this provision, we can undoubtedly issue writs of *certiorari* in all proper cases.

Amer. Construction Co. *v.* Jacksonville Railway, 148 U. S. 372, 380.

"And although, as observed in that case, this writ has not been issued as freely by this court as by the Court of Queen's Bench in England, and, prior to the act of March 3, 1891, c. 517, 26 Stat. 826, had been ordinarily used as an auxiliary process merely, yet, whenever the circumstances imperatively demand that *form* of interposition, the writ may be allowed, as at common law, *to correct excesses of jurisdiction and in furtherance of justice.*"

Tidd's Practice, *398; Bac. Ab.,—*certiorari.*

In Forsyth *v.* Hammond, 166 U. S. 506 (decided April 19, 1897), it is held in the head notes as follows:

"Under the judiciary act of March 3, 1891, c. 517, the power of this court in *certiorari* extends to every case pending in the Circuit Courts of Appeals and may be exercised at any time during such pendency, provided the case is one which, *but for this provision of the statute*, would be finally determined in that court."

"While this power is co-extensive with all possible necessities and sufficient to secure to this court a final control over the litigation in all the Courts of Appeal, it is a power

which will be sparingly exercised, and only when the circumstances of the case satisfy this court that the importance of the question involved, **the necessity of avoiding conflict between two or more Courts of Appeal, or between Courts of Appeal and the courts of a State**, or some matter affecting the interests of the nation in its internal or external relations, demands such exercise."

"As in the contests between the parties to this suit, the Circuit Court of Appeals for the Seventh Circuit, and the Supreme Court of the State of Indiana had reached opposite conclusions as to their respective rights, and as all the unfortunate possibilities of conflict and collision which might arise from these adverse decisions were suggested when this application for *certiorari* was made, it seemed to this court that although no final decree had been entered, it was its duty to bring the case and the questions here for examination at the earliest possible moment."

Mr. Justice Brewer, in the opinion (pp. 513–4), held as follows:

"This question of power (to issue writ of *certiorari*) has, indeed, already been decided by this court in prior cases:

American Construction Company *v.* Jacksonville, Tampa, etc., Railway Company, 148 U. S. 372, 383.

"The Three Friends," 166 U. S. 1.

[Here follows history and purpose of act of 1891, when the court resumes:]

"It was obvious that all contingencies in which a decision of this tribunal was of importance could not be foreseen, and so there was placed in the act creating the Courts of Appeal, in addition to other provisions for review by this court, this enactment:

"And *excepting always* that, in any such case as is hereinbefore made final in the Circuit Court of Appeals, it shall be competent for the Supreme Court to require, *by certiorari or otherwise*, any such case to be certified to the Supreme Court for its review and determination, with the same

power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court."

"The general language of this clause is noticeable. It applies to every case in which but for it the decision of the Circuit Court of Appeals would be absolutely final, and authorizes this court to bring before it for review and determination the case so pending in the Circuit Court of Appeals, and to exercise all the power and authority over it which this court would have in any case brought to it by appeal or writ of error. Unquestionably the generality of this provision was not a mere matter of accident. It expressed the thought of Congress distinctly and clearly, and was intended to vest in this court a comprehensive and unlimited power. The power thus given is not affected by the condition of the case as it exists in the Court of Appeals. It may be exercised before or after any decision by that court and irrespective of any ruling or determination therein. All that is essential is that there be a case pending in the Circuit Court of Appeals, and of those classes of cases in which the decision of that court is declared a finality, and this court may, by virtue of this clause, reach out its writ of *certiorari* and transfer the case here for review and determination."

"We reaffirm in this case the propositions heretofore announced, to wit, that the power of this court in *certiorari* extends to every case pending in the Circuit Court of Appeals, and may be exercised at any time during such pendency, provided the case is one which, but for this provision of the statute, would be finally determined in that court. And further, that while this power is coextensive with all possible necessities and sufficient to secure to this court a final control over the litigation in all the courts of appeal, it is a power which will be sparingly exercised, and only when the circumstances of the case satisfy us that the importance of the question involved, the necessity of *avoiding conflict between two or more Courts of Appeal, or between Courts of Appeal and the* **courts of a State**, or some matter affecting the interests of this nation in its internal or external relations demands such exercise.

Application of Foregoing Precedents to the Two Cases Pending in this Court as Certified from New Orleans, Alabama and Atlanta, Showing Gravity of Issues Now Involved.

Apropos of the concluding words of the foregoing extract from the opinion to the effect that the writ of *certiorari* will always be granted where there is or appears "the necessity of avoiding conflict between two or more Courts of Appeal, *or between Courts of Appeal and the courts of a State*," *etc.*, it was suggested at the hearing that there is now pending in this (the Supreme) court still another petition for writ of prohibition, mandamus, etc., against Judge Newman, of the Circuit Court of the United States for the Northern District of Georgia, and it was inquired whether the suit filed in the Chancery Court of Alabama, prosecution of which Judge Newman has enjoined, was in the nature of an "auxiliary" suit. It is respectfully suggested that, independently of all that is shown on the face of this present record on appeal fully justifying this court in having granted our *certiorari*, in receiving our record, and in considering the merits of the whole case, when this Honorable Court come to examine into the record certified up from Alabama and Atlanta, and read the record and several briefs on file in *that* connection (to all of which attention is earnestly invited), it will find itself confronted with identically the same situation and condition of antagonism as threatened or described in the cases cited *supra*, and that if such conflict be not already an accomplished fact, inevitably there must come in due course the very "conflict between Courts of Appeal and the courts of a State," which, it is conceded *supra*, the clause in the statute quoted has wisely and beneficently provided against. In brief, the suit instituted in Alabama is *not* an "auxiliary"

suit, but an *independent* action for **redemption and accounting,** etc.

We quote the first two paragraphs of the petition, but refer the court for greater particularity to the full record (only 67 pages), and especially to the first nine pages devoted to the petition, and to the several briefs of counsel filed along with said application, all of which are self-explanatory, and will serve to elucidate the true facts and conditions, if considered in conjunction with the merits of the case on this appeal. Although the court will note that the two suits are each independent the one of the other and with different parties and different subject-matter and wholly at variance as to the character and purpose of the respective actions. The petition *there* recites:

"Your petitioners, The Huguley Manufacturing Company, a corporation chartered and organized under the laws of the State of **Alabama** and the Alabama and Georgia Manufacturing Company, a corporation chartered by Act No. 183, of the legislative acts of the State of *Alabama* approved February 7, 1866, and duly organized and operated thereunder, respectfully state unto your Honors as follows:

I. "That they are the complainants in a suit, brought in the Chancery Court of the First District of the Northeastern Division of *Alabama*, for the purpose of *redeeming* certain property—a cotton duck manufacturing plant—from the West Point Manufacturing Company, the Galeton Cotton Mills, and the Riverdale Cotton Mills, *each* a corporation under the laws of the State of *Alabama*, and from J. J. Robinson, Trustee, a citizen of the State of *Alabama*, which said defendant corporations are holding said property as mortgagees in possession, etc.

II. "Your petitioners further represent that they are not parties, and never have been made or served as parties to any litigation had or pending in the Circuit Court of the

United States for the Northern District of Georgia, but that, notwithstanding this fact, they were served in *Alabama* with what purported to be process from the said Circuit Court of the United States for the Northern District of Georgia, and compelled to appear before the said court on pretended 'ancillary' proceedings, based upon a previous suit which was no longer pending, and in which a decree had been rendered and fully executed for a foreclosure of the mortgage, under which redemption was sought in *Alabama* as to property *lying wholly within the State of Alabama, and from Alabama corporations,* etc.

[The lands in Alabama on which were situated the entire cotton mill plant and village, having been assigned and quit-claimed by W. H. Huguley & Co. to The Huguley Manufacturing Company of Alabama in return for its capital stock.]

When it is considered that the suits now pending in this court present the case of a Federal district judge, in Georgia, disregarding the known fact that the trust estate of the Alabama and Georgia Manufacturing Company was already under the custody and protection of the State court, whose jurisdiction had first attached and which was still being continued, and the State court was still holding its prior liens over the mill plant and a large sum of cash and other property, and whose receiver had been expressly charged by mandatory order to pay promptly the interest, so as to avert the very thing that happened, a technical pretended "default"; and when it is further considered that notwithstanding this and the further fact which, from the answer and exhibits to the bill stood out equally as plainly and prominently, that every foot of this great factory property, lands, plant, village, etc., were all wholly within the State of *Alabama*, except possibly a few *worthless* islands, this court sitting in the Northern "*District*" of Georgia, whose process could not legally extend beyond the

State line, yet not only interfered with the jurisdiction previously attaching in and to the State court, but actually decreed and undertook to sell in Georgia, by its commissioner, this valuable property, shown and known to be situate in *Alabama;* and lastly, when it is considered that years after the execution of its *void* decrees under all these *void* proceedings had in said Federal District Court in Georgia, said court undertook, in face of Revised Statutes, Section 720, under pretended "ancillary" bill filed by an utter *stranger* to the record, claiming only as a *pendente lite* purchaser, to enjoin a suit filed by two *Alabama* corporations (never made parties to the foreclosure suit) for *redemption*, sought in *Alabama* as to property lying wholly within the State of *Alabama* and from three *Alabama* corporations,—the question arises, could any *graver* issues be presented for the adjudication of this august tribunal?

The alternative proposition has been well stressed by that recognized expounder and authority on constitutional law, Senator Morgan, leading counsel for these appellants, that when the courts of Alabama proceed with the further adjudication of the suit for redemption and accounting there pending in a court of *proper* jurisdiction (as formally admitted by *all* the defendants having appeared, pleaded, answered and demurred to our bill, and the cause formally submitted and set down for a hearing before Chancellor Kelley); or "when the courts of Alabama proceed, as they will be or have been asked to foreclose this deed of trust in behalf of persons who own bonds that are unpaid and are not parties to this suit, it will appear, not more clearly, but more forcibly, that the decree of the Circuit Court in this cause is a direct and unjustifiable interference with the sovereign rights and the judicial power and

authority of Alabama, and that its decrees, not final in form or effect, which have been affirmed by the Circuit Court of Appeals, are not such final decrees as oust the jurisdiction of the Supreme Court on Appeal.

"And it will then appear that this court, if it shall deny relief to the appellants, will leave open a field of litigated demands, already very wide, to a much greater increase, all of which it is now in the power of this court to settle in its decree in this case. The questions presented are of a character that will outlive the efforts of any other court to settle them."

[See brief, pages 34–5 (green cover), filed by Hon. John T. Morgan, in reply to brief and argument of appellees on motions for *certiorari* and to dismiss the appeal.]

To sum up on this contention:

If the court deems its jurisdiction on appeal doubtful, it now has the record before it. While the *certiorari* may have been based on an appeal, it is at last merely a means of bringing up the record.

Form is immaterial in this regard. The writ of *certiorari* does not give this court jurisdiction; it is only the process to get the record, and the record is now here, perfected by means of the writ of *certiorari*.

In re Chetwood, 165 U. S. 443, 462, *supra*.

II.

Extracts from the record showing that **the question of "jurisdiction," both of "parties" and of "subject-matter," was distinctly raised and passed upon in the very outset of the cause by demurrer in the Circuit Court, and latterly in the opinion and decree of the Circuit Court of Appeals.**

[Refuting loose or general assertion of appellees.]

Appellees have advanced, in a general way, the suggestion that not until the application on part of appellants, through the undersigned, their solicitors, for the previous writ of *certiorari*, was the question of "jurisdiction" ever raised or even suggested in this cause.

This is error and not in accordance with the record, which shows plainly on its face that the question of **"jurisdiction," not only of the subject-matter** *but of* **"parties," has been distinctly raised and formally passed upon by both the Circuit Court and by the Circuit Court of Appeals, in at least two different instances.**

In the very outset or institution of this litigation, and before filing any answer to Robinson, Trustee's, original bill of complaint, the following appears:

"*Demurrer, Bill for Foreclosure, etc.*

"In the Circuit Court of the United States for the Northern District of Georgia.

"J. J. ROBINSON
v.
ALABAMA AND GEORGIA MANUFACTURING COMPANY *et al.*

"The defendant, the Alabama and Georgia Manufacturing Company, by its solicitors, N. J. & T. A. Hammond, and the Huguley Manufacturing Company, by its solicitors, N. J. & T. A. Hammond and John C. Orrick, come and by protestation, not confessing or acknowledging all or any of the matters and things in said complainant's bill to be true, in manner and form as therein set forth and alleged, do demur and say that said bill is insufficient in law.

"And for causes of demurrer they specially set down the following:

"1. The alleged trust mortgage which is the basis of said complainant's claim of right, gives him no authority to sue *alone* to enforce the same. He has no title in himself alone, but is only *one* of the joint trust mortgagees.

"2. If in any event complainant could so sue alone, his bill does not sufficiently allege any facts which authorize him to sue *without joining W. T. Huguley, his co-trustee, as complainant.*

"3. The surviving joint trustees, W. T. Huguley and J. J. Robinson, for all that appears in said bill, must necessarily join to assert the trust in said mortgage set forth, and because said W. T. Huguley is a citizen of and a resident of said district in which the defendants against whom this bill is filed are citizens and residents, thus said court *has no jurisdiction* to foreclose said mortgage as by said bill prayed for.

"4. Said complainant, if allowed to sue without joining his co-trustee, for the purposes of his said bill, *must necessarily join the bondholders* (or at least *so many of them* as have made the election that the bonds shall be due and then request that *they* proceed) as parties complainants in said bill, and make the *others* parties to his bill, or give a reason why he cannot.

"5. Said complainant does not aver when default in the payment of interest on said bonds or on any of them was made known to the trustees or either of them, nor that *any notice thereof has been served on the president of said Alabama and Georgia Manufacturing Company*, both which are conditions precedent to the exercise of authority and duty by said mortgage conferred on said trustees or a *majority* of them.

"Wherefore these defendants respectfully demand the

judgment of this honorable court whether it or either of them shall be compelled to make any further or other answer to said bill or any of the matters or things therein contained, and pray to be hence dismissed with its reasonable costs in this behalf sustained.

"THE HUGULEY MANUFACTURING CO. and
"THE ALABAMA AND GEORGIA MANUFACTURING CO.

"By JOHN C. ORRICK and
"N. J. & T. A. HAMMOND,
"*Counsel as above stated.*"

"Mr. John C. Orrick and N. J. & T. A. Hammond, solicitors for and counsel of said defendants as above stated, do certify that in our opinions the foregoing demurrer is well founded in point of law.

"JOHN C. ORRICK,
"N. J. & T. A. HAMMOND,
"*Of Counsel for said Defendants.*"

Part I, pp. 11–12.

It is also shown on the face of the last record certified up on this appeal from the Circuit Court of Appeals, that the question of not only jurisdiction of the "*parties*," but jurisdiction of the "*subject-matter*," were both distinctly passed upon by the Circuit Court of Appeals, which, in its opinion (by Shelby, Judge) last rendered in this cause, from which the present appeal was taken and allowed, held as follows:

"1. The possession of the purchasers at the first foreclosure sale was not wrongful in the sense that such possession made them trespassers. **The decree was rendered by a court having jurisdiction of the case.**

The mortgage foreclosed was valid. The decree was binding and not subject to collateral attack. It was valid and effectual to place the purchasers in possession and to protect them in possession till it was reversed.

2 Jones on Mortgages (5th Ed.), Secs. 1587, 1588.

"It was reversed by this court, and the Circuit Court then granted an order of restitution, but upon condition that the Huguley Manufacturing Company would pay into court the sum of $10,000.00 which had been paid by the purchasers at the date of their purchase.

"This court, on appeal, affirmed this condition. The Huguley Manufacturing Company did not pay the $10,000.00 and so were not entitled to the possession by the terms of the order made by the Circuit Court and affirmed by this court. From its inception the possession in question was sanctioned by a decree of the court **having jurisdiction of the parties and the property.**"

Record on Last Appeal, Part III, page 106 (yellow cover.)

Therefore, in view of the question of "jurisdiction" not only of "*subject-matter*," but of "*parties*" having been *twice* raised and *formally* passed upon, first, in the trial Circuit Court, and latterly in the Circuit Court of Appeals, appellants now are clearly entitled in this court to assign as errors, on the face of said record, the respective rulings of the lower courts upon so vital a question.

The consideration of this Honorable Court upon this grave issue is now respectfully and earnestly invoked by these appellants.

III.

Jurisdiction of Parties and Subject-Matter. Burden on Court to Inquire into **ex proprio motu.** *Neither Silence, Consent, or Even Solicitation of Parties Can Convey Juris-*

diction. Advantage May be Taken of Defect at Any Stage of the Proceeding, and even if Point Raised for First Time on Appeal.

The want of jurisdiction of a court of equity to foreclose a mortgage upon lands situated beyond the territorial jurisdiction of the court, and to sell those lands under its decree, is radical and absolute, and may be suggested at any stage of the proceedings by counsel, or may be noticed by the court *ex proprio motu*, Mansfield, etc., Ry. Co. *v.* Swan, 111 U. S., p. 379; Parker *v.* Ormsby, 141 U. S. 81; Grace *v.* Am. Cen. Ins. Co., 109 U. S. 278.

In the case first cited, this court said:

"On every writ of error or appeal, the first and fundamental question is that of jurisdiction, first of this court, and then of the court from which the record comes. This question the court is bound to ask and answer for itself, even when not otherwise suggested, and without respect to the relation of the parties to it."

In Morris *v.* Gilmer, 129 U. S., p. 325, this court said:

"But if the record disclose a controversy of which the court cannot properly take cognizance, its duty is to proceed no further, and to dismiss the suit; and its failure or refusal to do what, under the law applicable to the facts proved, it ought to do, is an error which this court, upon its own motion, will correct when the case is brought here for review. The rule is inflexible and without exception, as was said, upon full consideration, in Mansfield, etc., Ry. Co. *v.* Swan, 111 U. S. 382." And the court goes on and quotes *verbatim* the extract above made from that case.

"If the record on its face shows a want of jurisdiction,

advantage may be taken of the defect, by motion, at any stage of the proceeding."

Coal Co. *v.* Blatchford, 11 Wall. 172.
The Cassius, 2 Dall. 365.
Municipal Inv. Co. *v.* Gardiner, 62 Fed. 954.
Blythe *v.* Hinckley, 84 Fed. 246.
Tug River Coal & Salt Co. *v.* Brigel, 67 Fed. 625; 31 U. S. A. 665.

In Tug River Coal & Salt Co. *v.* Brigel, 67 Fed. 625 (decided May 7, 1895), it was held as follows:

"A judgment was reversed on the sole ground that the Federal courts had no jurisdiction, *which point was raised for the first time on appeal.*"

"Where the court has no lawful power to act, by reason of the fact that such power either is not conferred or is expressly withheld, with regard to the *subject-matter* of the suit, the parties thereto cannot be said to have waived their objection to this want of power because it is not made at the proper time. Such an objection cannot be waived, and is fatal at any stage of the proceeding."

12 Ency. Pl. & Pr. 189. Citing:
Wyatt *v.* Judge, 7 Porter (Ala.), 37.
Merrill *v.* Jones, 8 Porter (Ala.), 554.
Crane *v.* Barry, 47 Ga. 476.

We shall discuss, in their order, the other errors specified in the assignments of errors.

IV.

The Circuit Court of the United States for the Northern District of Georgia was without jurisdiction to entertain so much of the bill filed in this cause as sought to foreclose the mortgage set up against property situated in Chambers county, in the State of Alabama, without jurisdiction to decree the sale thereof to be made by its officers in the State of Georgia, and without jurisdiction to confirm the sale so made.

This want of jurisdiction appears on the face of the proceedings from beginning to end. The mortgage, made an exhibit to and part of the bill of complaint, describes in detail certain islands mortgaged as lying in Harris county, in the State of Georgia, and all the remainder of the property as lying wholly in Chambers county, in the State of *Alabama*. The decree of foreclosure so describes them, and directs the lands situated in Alabama to be sold in Georgia. The deed of the master to the purchasers covers the lands in Alabama. The description is as follows:

"All of a large island in the Chattahoochee river, designated as Island No. 6, containing one hundred and forty-three (143) acres, more or less; also Island No. 9, containing seven (7) acres, more or less; also a small island between No. 6 and No. 9, upon which the east end of the factory building rests, containing four (4) acres, more or less, all of said three above-described islands being in the 20th district of Harris county, Georgia.

"*Also* all that tract or parcel of land lying on the west side of the Chattahoochee river, opposite the above-described islands, bounded on the east by said river, beginning at a point on the west bank of said river, nearly opposite the center of the (7) acre island, at a black gum, at or near a place known as Sell's Corner; thence in a straight line to a point where the land owned in 1868 by Mrs. Freeman, Job Ross, and James Campbell joins, known as the Ross and Freeman Corner, to a pine stake; thence in a line to a branch near said stake, thence in a line down said branch to said river; thence down the western bank of said river to the beginning point, containing sixty-five and 23-100 (65.23) acres, more or less, **lying and being in Chambers county, State of Alabama,** and being part of section twenty-eight and section twenty-nine (28 and 29), Township twenty-one (21), range twenty-nine (29), as well as a forty (40) foot right of way from factory building to the public road, leading from West Point, Georgia, to Berlin, Alabama, at any point where the factory company may

locate it, including *all tenements and improvements, including the cotton mill and all the machinery therein or thereto belonging, and all water privileges and riparian rights now*, or hereafter owned or enjoyed by said Alabama and Georgia Manufacturing Company."

Part I, pp. 6–7.

From the face of this description in the mortgage, therefore, it would seem that, barring the few islands named, this entire cotton-mill plant, lands, factory village, tenements, etc., etc., are situated *wholly* within the State of **Alabama.**

Appellees admit this to be the fact.

It likewise is shown, on the face of the record, that these islands, lying "*opposite*" and on the *other* side of the river, are entirely divorced and separated from *all* the remainder of the said lands and cotton-mill plant in Alabama, and, consequently, that portion of said property *claimed* to be in Georgia, on the one hand, and all the remainder of the property so stated to be in Alabama, are, as matter of fact, plainly "*divisible*" or isolated, the one from the other.

This disposes of the claim of appellees on oral argument that the property is "indivisible."

It is an elementary principle of jurisdiction that a court sitting in one State, whether State or Federal, cannot foreclose a mortgage on and decree a sale of land situated in another State.

Boyce *v.* Grundy, 9 Peters, 275.

Watkins *v.* Holman, 16 Peters, 26.

Northern Ind. R.R. Co. *v.* Michigan Central Railroad, 15 How. 233.

The case of Boyce *v.* Grundy, *supra*, is exactly the case at bar. In deciding that case Mr. Justice Story said:

"Another objection is to that part of the decree which creates a lien upon the land in controversy lying in another State, and decrees a sale for the discharge of the lien. We are of opinion that the decree is erroneous in this respect; * * * the court had no jurisdiction to decree a sale to be made of land lying in another State by a master acting under its own authority."

It would serve no useful purpose to pile up authorities on this question.

When land lies partly in one district of the United States and partly in another district, and both districts are "*within the same State*," then the court of either district may take jurisdiction under the provisions of Sec. 742 of the U. S. Revised Statutes.

But where the land lies in two districts, one in one State and the other in another State, no authority is given to the court of one district to act on the land in the other.

Want of jurisdiction of this kind is absolute, and cannot be cured by waiver or consent of parties.

The Lucy, 8 Wallace, 307.
The Nonesuch, 9 *Id.* 504.
Penn. *v.* Quicksilver Co., 10 *Id.* 553.
Railroad Co. *v.* Ramsay, 22 *Id.* 327.

Necessity of ancillary and auxiliary bills, in order to subject property lying in another State.

In the case at bar, no ancillary or auxiliary bill was ever filed in Alabama to subject the property concededly lying within that State, which was the *whole* cotton mill plant (except, possibly, a few worthless islands).

In Mercantile Trust Co. *v.* Kanawha and Ohio Ry. Co., 39 Fed. 337, Mr. Justice Harlan, after reviewing exhaustively the facts, concluded in the following strong words:

"It might be well if Congress would so enlarge and reg ulate the jurisdiction of the courts of the United States as to enable a Circuit Court, in which is brought an original suit for the foreclosure of a mortgage resting upon an interstate railroad, to take actual possession by its officers of the entire line, and all of the mortgaged property, wherever situated, and administer it for all concerned; preserving in that mode the unity of the road, and the just rights of mortgagor, mortgagees, and creditors, as well as those of the general public interested in commerce among the States. *But there has been no such legislation, and we do not see our way clear to effect any such result by judicial orders merely.*"

The rule recognizing the absolute regularity and necessity for the filings of ancillary and auxiliary bills in order to reach and subject property—especially railroad property—lying in other States, has been carefully laid down, under petition from the Circuit, by Justices Field, Harlan, Brewer and Brown, in the important case of the Farmers' Loan and Trust Co. *v.* Northern Pacific Railroad Co., 69 Fed. 871, and 72 Fed. 26.

To same effect, see:

Dillon *v.* Oregon S. L. and U. N. Ry. Co., 66 Fed. 622, and cases cited.

Central Trust Co. *v.* Wabash, St. Louis and P. Ry. Co., 29 Fed. 620.

Reynolds *v.* Stockton, 140 U. S. 254, 272.

Wilmer *v.* Atlanta and Richmond Air Line Ry. Co., 2 Woods, 447; 30 Fed. Cases, No. 17,776.

A very thorough illustration of the proper course to be pursued, where property is in two States, will be found in the case of Wilmer *v.* Atlanta and Richmond Air Line Railway Company. In that case the existence of the two companies of different States was recognized, and the two

companies appeared and were made parties. Furthermore, in regard to the property outside of the State, the court expressly say :

"We are not asked to foreclose the mortgage. We are not asked to confer on the trustees any power they do not already possess, but simply to tell them what are their powers under their deed."

The court also say : "The complainants may be required to file ancillary bills in other States," and the decree was that the trustees were directed to sell the road at Atlanta, Georgia.

Wilmer *v.* Atlanta and Richmond Air Line Railway Co., 2 Woods 447, 455, 456 and 457.

In all railroad foreclosures recently had in the jurisdiction of the Circuit Court of the United States for the Northern District of Georgia, ancillary bills were filed in every State through which the roads ran ; decrees were taken on each of these ancillary bills, and the mortgagor railroad companies were required to execute deeds, as well as the Master Commissioner, and the purchaser was given the right to demand a deed from the trustee foreclosing the mortgage.

This was true in the Central railroad foreclosure, Richmond and Danville foreclosure, Georgia Pacific foreclosure, Savannah and Western foreclosure, Marietta and North Georgia foreclosure, and Chattanooga, Rome and Columbus foreclosure, and in the case of the Eagle and Phenix Manufacturing Company foreclosure.

In this connection, respecting the jurisdiction of the Circuit Court to convey lands in another State, the Circuit Court of Appeals, Fifth Circuit, in the case of Guarantee

Trust and Safe Deposit Co. *v.* Delta and Pine Land Co., 104 Fed. p. 5 (May 30, 1900), held as follows:

"While a Federal Court of Equity may compel a conveyance of lands in another State by a decree *in personam*, against a party who holds the title, *it has no jurisdiction to itself to transfer the title to such lands by a sale and conveyance made through the master or commissioner.*"

* * * * * * *

In the opinion, it is said:

"A writ of assistance, issued by the court in Tennessee to put the purchaser, at the sale made by the master, in possession of the property, *would be wholly inoperative, because such process could have no extra-territorial effect.*"

Toland *v.* Sprague, 12 Pet. 300; 9 L. W. 1093.
Picquit *v.* Swan, 5 Mason, 40; Fed. Cases, No. 11, 134.
Ex parte Graham, 3 Wash. C. C. 456; Fed. Cases, No. 688.
Walker v. Lea, C. C. 47; Fed. Cases, No. 645.

See also Pennoyer *v.* Neff, 95 U. S. 714; L. W. 565.

See brief of John T. Morgan filed on *certiorari*, pp. 78–89.

See brief of John T. Morgan, Welles, Bennett & Welles, and John M. Chilton, filed under application for writ of prohibition, mandamus, etc., pp. 6 to 14.

In view of these settled adjudications on part of both the Circuit Court and Circuit Court of Appeals, appellants submit and insist that, if uniformity and consistency of decision and practice are to be observed, these courts ought not be permitted to make an exception of *this* case and

thus ignore its own invariable rule which each court has applied in all other cases of foreclosure.

V.

Jurisdiction as to Parties— When a want of indispensable parties cannot be supplied without ousting jurisdiction, the bill should be dismissed.

See :

Northern Indiana R.R. Co. *v.* Mich. Cent. R.R. Co., 15 How. 233.

4th Na[illegible] Bank New York *v.* N. O. and C. R. Co., 11 Wall. 624, 20 : 82.

Shields *v.* Barrow, 17 How. 130, 15 : 158.

Barney *v.* Baltimore, 6 Wall. 280, 18 : 825.

California *v.* Southern Pac. Company, 157 U. S. 229.

Louisville, N. A. and C. R.R. Co. *v.* Louisville Trust Co., 174 U. S. 552.

Balto. and Ohio R.R. Co. *v.* Wheeler, 1 Black, 286, 17 : 130.

Also reported as Ohio and Miss. V. R.R. Co. *v.* Wheeler, 1 Black, 286, 17 : 130.

St. Louis and San F. R.R. Co. *v.* James, 161 U. S. 54, 40 : 80.

It is the duty of the Circuit Court to dismiss the suit if parties are improperly or collusively joined or made for purpose of creating a case of which that court would have cognizance, and an injunction will lie to prevent an execution of the decree.

18 Stat., p. 3, p. 470 (Act of March 3, 1875, c. 137, Sec. 5).

Hawes *v.* Contra Costa Water Co., or

Hawes *v.* Oakland, 104 U. S. 450.
Hayden *v.* Manning, 106 U. S. 586.
Broadus *v.* Broadus, 86 Fed. 951.
Works on Courts and their Jurisdiction, p. 104, citing:
Shryer *v.* Miner, 20 Ind. 175.
See also specially: Williams *v.* Nottawa, 104 U. S. 209.

This subject has been so thoroughly covered in the briefs of associate counsel, that we will only remind the court of the following statement in the original decree of the Circuit Court, viz: "And the case has really more the appearance of the holders of these obligations proceeding through the trustee, as a *mere nominal party*, than the act of a trustee in discharge of the duty incumbent upon him by virtue of a trust which he had assumed and agreed to carry out."

The record undoubtedly discloses that the framers of this bill, by failing to join these bondholders, both majority and minority, as parties in their individual capacity, as suitors, and by omitting to name the holders and state their citizenship (which *was* stated in part in the answer), and by failing to join the two *Alabama* corporations *first* chartered before the Georgia, and by misjoining William T. Huguley, co-trustee, as party *defendant*, whereas there can be no question that he properly should have been aligned as an indispensable party *complainant* with Robinson, perpetrated a patent fraud upon the jurisdiction of the Circuit Court. After the reversal of the first sale, when it subsequently developed that not only the holders of the minority ($22,000.00) bonds had repudiated the action of Robinson and Lanier in bringing the bill for foreclosure, but that even the majority bondholders ($43,000.00) then refused to follow further the leadership of Lanier, and actually rebelled and refused to permit their bonds used in his second bid of May 6, 1896—it became then absolutely indispensable that

both wings of these bondholders should have been joined as parties for the common protection of their rights against the usurpation of the West Point Manufacturing Company, which, under its "*aliases*," and "dummies," the "Galeton Cotton Mills" and "Riverdale Cotton Mills," has clung tenaciously to the possession of this property for now ten years, pocketing several hundred thousands of dollars of rents and profits due the Huguley Manufacturing Company, though ordered by the Circuit Court paid over to the *bondholders, which was never obeyed.*

Despite all these conflicting equities—representing at least *four* distinct antagonistic interests, viz: (*a*) Huguley Manufacturing Company, (*b*) Bondholders (minority), (*c*) Bondholders (majority), and (*d*) West Point Manufacturing Company or "Galeton Cotton Mills,"—we find the solicitors for the West Point Manufacturing Company, who had originally set out to represent the bondholders,—a directly opposite and hostile interest to the West Point Manufacturing Company, latterly drafting the final decrees of June 4, 1898, and October 15, 1898, which were approved by said Circuit Court, whereby it was sought to adjust and reconcile the divers conflicting interests and equities of all four of the named indispensable parties under *one* general decree—a sheer impossibility, and an effort which, while taking every care of the favored suitor, L. Lanier and his West Point Manufacturing Company, slaughtered the *cestui que trust* which the court was supposed to be [illegible]lously safe-guarding, while the interests of the Huguley Manufacturing Company were utterly lost sight of in this final decree.

In this connection, and especially mindful of questions propounded at the hearing inquiring concerning the character of our other suit still pending and undetermined before your honors, we deem it in order to invite your attention to the following:

The record discloses that neither the Alabama and Georgia Manufacturing Company, of Alabama, the mortgagor corporation, nor the Huguley Manufacturing Company, of Alabama, the owner of the equity of redemption to the entire cotton mill plant and village and all tenements, appurtenances, etc., through a quit-claim deed from W. H. Huguley & Company in payment of its capital stock, were ever made or served as parties to the said original bill of foreclosure, and never appeared in said suit. Indeed, it appears on the face of the record that, barring a service upon N. J. & T. A. Hammond, in their capacity of solicitors solely, there was in fact no legal service ever made or any appearance entered in so far as the Alabama and Georgia Manufacturing Company, of Georgia, or of the Huguley Manufacturing Company, of Georgia, were concerned, not one of the regular officers or agents of either of said corporations even of Georgia having ever been duly and properly served, as required by law. (Part I, p. 10, and Condensed Printed Record, or Extracts, pp. 10–11, used on application for *certiorari*.) On its face, also, it is made manifest that the president of the Alabama and Georgia Manufacturing Company, W. H. Huguley, himself then a resident and citizen of Chambers county, Alabama, was never notified or served in any capacity, whether by bondholder or trustee, as required by the express terms of the trust deed, or by any officer appointed by the court, as expressly required by law.

Code of Alabama, Sections 1234 and 3274.
Code of Georgia, Section 1899 (3369).
See also Swan Land and Cattle Co. *v.* Frank, 148 U. S. 604.

"The question whether or not jurisdiction has been acquired by a proper service of process is one which involves the jurisdiction of the court, within the meaning of the Act

of Congress of March 3, 1891, Sec. 5, providing for an appeal from the District Court directly to the Supreme Court of the United States when the jurisdiction of the former court is involved."

Shepard *v.* Adams, 168 U. S. 608, 602.

"A corporation is, and while its corporate existence lasts, must remain, a citizen only of that State which gave it life."

United States *v.* Southern Pacific R.R. Co., 49 Fed. 303.
St. Louis *v.* Wiggens Ferry Co., 11 Wall. 423, 192.
St. Joseph and Grand Island R. Co. *v.* Steele, 167 U. S. 659, 663.
Ohio, etc., R.R. Co. *v.* Wheeler, 1 Black, 286.

"The defendant being a corporation of the State of Alabama, has no existence in this State as a legal entity or person, except under and by force of its incorporation by this State; and, although incorporated in the State of Tennessee, must, as to all its doings within the State of Alabama, be considered a citizen of Alabama, which cannot sue *or be sued by another citizen of Alabama in the courts of the United States.*"

Memphis and Charleston R.R. Co. *v.* Alabama, 107 U. S. 581, citing:
Ohio and Miss. Railroad Co. *v.* Wheeler, 1 Black, 286.
Railway Co. *v.* Whitton, 13 Wall. 270, 283.

"For the purpose of determining the jurisdiction of the Circuit Court of the United States, a corporation chartered by several States must, when sued in either State, be treated as a citizen of that State alone, without regard to where it has its principal place of business."

Shaw *v.* Mining Co., 145 U. S. 449.
Morawitz on Corporations, Secs. 996, 999.
Railway Co. *v.* Whitton, 13 Wall. 283.
Nashua and Lowell R.R. Corp. *v.* Boston and Lowell R.R. Corp., 136 U. S. 356.
Graham *v.* Boston, H. and E. R. Co., 118 U. S. 161.

Referring to the case of Ohio, etc., R.R. Co. *v.* Wheeler,

1 Black, 286, Mr. Carter, in his "Jurisdiction of Federal Courts," p. 79, says:

"However misleading the fact of the single name in both States, the single objective purpose, or the community of interest may be, the fact must remain that in legal effect there is a distinct corporate entity in each State, owing its paternity to that State alone. To adopt the language of the court in Ohio, etc., R.R. Co. 'The president and board of directors of the Ohio & Miss. R. Co., is, therefore, a distinct and separate corporate body, in Indiana, from the corporate body of the same name in Ohio.'"

VI.

No effective sale, conveyance or confirmation under any view against the Alabama and Georgia Manufacturing Company. It had expired before the same occurred.

Charter expired March 21, 1896.

West End & Atlanta Street Ry. Co. *v.* Atlanta Street R. Co., 49 Ga. 151, 153.

Suit against *it* fell on such death. Subsequent action a nullity.

Pendleton *v.* Russell, 144 U. S. 640, 644.

Logan *v.* Western & Atlantic Ry. Co., 87 Ga. 534.

In this case the decree is wholly against Alabama and Georgia Manufacturing Company of *Georgia*. Therefore it was an essential party, and as to it the sale and all proceedings are void.

Huguley Manufacturing Company not decreed against.

No *res adjudicata*, even where jurisdiction of case pending, as to those not parties.

VII.

No valid decree or order against William T. Huguley, as trustee, ever rendered or even considered or mentioned by the court on the issues of fact presented in the pleadings, the only decree entered being a so-called decree pro confesso on the order book by counsel for complainants being merely interlocutory, and the original decree having been reversed, could not become final until "opened and explained to the court" when foreclosure was applied for. Hence, Huguley still free to challenge in the Supreme Court the want of equity in the bill and the jurisdiction of the Circuit and Appellate Courts over the subject-matter or parties, and the jurisdiction of the court to grant the prayer in the bill.

It is shown on the face of the record that there was never entered or even considered or asked for against William T. Huguley, as trustee, any valid decree in this case; that the only decree taken was merely a so-called decree *pro confesso*, which was signed *only* by the counsel for the complainant in the equity suit, but was never mentioned by the court in any decree or order in the cause on the issues of fact presented in the pleadings until March 30, 1895.

The decree prior to that date foreclosing the mortgage having been reversed on the appeal, and the decree of March 30, 1895, making no reference to a decree *pro confesso* against W. T. Huguley, defendant, the decree entered on the order book by complainants' counsel was merely interlocutory, and, therefore, any after proceedings could only be *ex parte*, and it could not become a final decree against Huguley until it had been "opened and explained to the court" when the decree of foreclosure was applied for.

Such being the case, appellants contend some court must

ascertain and decree that the decree *pro confesso* so ente
on the order book by counsel "was proper to be mad
and accordingly Huguley can now raise any questions ch
lenging the want of equity in the bill or of the jurisdict
of the court over the subject-matter or parties to the s
or its jurisdiction to grant the prayer in the bill.

Thompson *v.* Wooster, 114 U. S. Repts. 104, 113.

As to decree *pro confesso* against William T. Hugul

See full discussion in the brief filed by Hon. John
Morgan, leading counsel for appellants, "in reply
brief and argument of appellees on the motions for *certio*
and to dismiss the appeal" (deep green cover), pp. 19 a
39–41, and also in his "argument and brief on the merits
the case" (light green cover), pp. 3–6; and also his
"supplementary brief" thereto (crimson red cover),
1–4).

See also brief of Morgan, Welles, Bennett & Wel
and Chilton, on "petition for prohibition, mandam
etc." (light buff cover), pp. 19, 23.

VIII.

*The property of the Alabama and Georgia Manufactur
Company, consisting of the factory plant and some* $40,000
of cash, and other "quick assets," having been placed,
1888, *under the control and protectorate of the Chanc
Court of Troup county, Georgia, through its receiver, H.
Fisher, who was continued in office under heavy bond for
administration of the trust estate, and particularly for
purpose of carrying out an express mandate of said S
court charging him with the duty to "promptly pay the p
due interest and the interest to accrue, when due, on the
mortgage bonds of said corporation, out of any funds he

have while he remains in office," and said receiver having in hand at least $20,000.00 *of cash and other "quick assets" available to meet the* $1,720.00 *of coupon interest on the* $43,000.00 *of complaining bonds, on the* 1*st day of July,* 1890, *and the* 1*st day of January,* 1891, *and on the* 21*st day of January,* 1891 *(the date when the original bill was filed), and the jurisdiction of the State Court having thus first attached, the Circuit Court of the United States for the Northern District of Georgia, was without jurisdiction to entertain the bill for foreclosure, without jurisdiction to decree any sale of said property, and the sales made pursuant to its decrees were absolutely null and void; and Robinson and Lanier, who were stockholders and directors in the Alabama and Georgia Manufacturing Company (Lanier having instigated the suit and secured the appointment of said receiver by the State court) were guilty of contempt of the State court for interfering and bringing this bill in the Federal court.*

It is shown on the face of the record in this cause that under the decree of the State Chancery Court of Troup county, Georgia, the following express stipulations, among others, appear:

"Further, in said subdivision, it was decreed to be paid as follows:

"F. Whatever part of the interest on the coupons of the first mortgage bonds of the Alabama and Georgia Manufacturing Company paid or to be paid by said Fisher under the order of this court for the disposing of the assets in his hands, as shall appear by the orders of the chancellor in this regard.

"G. These last-mentioned items to be taxed by the clerk upon such orders of the chancellor, and the clerk shall tax all other costs not herein specially provided for.

"Said decree further provides as follows:

"10. The dignity of the respective liens herein set forth are as follows:"

First. (Here the decree goes on to give precedence and priority to the "*interest on the mortgage bonds of the Alabama and Georgia Manufacturing Company over all other liens.*")

Part I, pp. 19–20.

Referring to the subsequent sale by the said receiver under the decree of the State court, the answer recites as follows:

"The bidders at said sale (W. H. Huguley & Co.) bid for said property the sum of $69,000.00. The next highest bid to their own was $68,500.00, which was by persons (Lanier and associates) in no way connected with those who did purchase, and who had none of the claims which were to be treated as cash at said sale. That shows the value of said property at that time. *All said bidding was for the property, subject to said first mortgage.*" (Ans. of defts.)

Part I, p. 21, and Part II, p. 145.

This answer of the Huguley Manufacturing Company and other like evidence in the record demonstrate the indisputable fact that this property was being zealously guarded by the State court, and with an eye singly to averting any default or foreclosure so long as its receiver "remained in office," and that its jurisdiction and custody continued for that purpose.

That this is clear is shown by the following evidence of William T. Huguley, which we here reproduce as pertinent to this material point:

Answer to Interrogatory 8. "I never, at any time, voluntarily abandoned the first appeal. Our failure to prosecute it was from sheer inability to make other than the supersedeas bond, as explained (*i. e.* by the American Surety Company.) Our inability grew out of the following facts:

"1. Because we had turned over in 1888 to Fisher, the receiver of the Alabama and Georgia Manufacturing Com-

pany, a large amount of 'quick assets,' (about $40,000), in self defense having the following order of court (May 22d '89) passed:—'*Said Fisher, receiver, shall promptly pay the past due interest, and the interest to accrue, when due, on the first mortgage bonds of said corporation out of any funds he may have while he remains in office.*'

"The receiver thus charged with this particular duty, did pay said interest and continued to act under said order up to the date of said alleged default, and it is now insisted that said receiver *had in hand on the date of said alleged default ample cash funds with which to pay said interest*, and he undoubtedly would have paid said interest *had proper demand been made on him.* It was his duty as the only legal representative (except the president) of the Alabama and Georgia Manufacturing Company to pay said interest, etc."

"2. So, also, my hands were tied in another direction. Under a certain lease contract, I had resigned the presidency of the Huguley Manufacturing Company, and transferred to D. Jannopoulo, St. Louis, all the 'quick assets' of the company, it becoming incumbent upon him in turn to *keep the mill a 'going concern' to meet all its current expenses, and especially take care of the interest on the bonds.* This contract was made in 1890 and expired by limitation in 1893. Said Jannopoulo is a foreigner, and little versed in matters of law—besides owning but a few shares of stock in the Company. (40)."

Part II, p. 142.

"In conclusion it is proper for me to explain that *because of the order of the State court, I had to transfer to the receiver about $40,000 of 'Quick Assets,' and in view of the special order of court charging him with the particular duty to pay said interest, and knowing he had ample cash in hand, I specially relied on him to meet the interest and otherwise take such steps as would protect his said trust under the circumstances.*"

Part II, pp. 144–5.

Answer to Cross-Interrogatory 9. "The Alabama and Georgia Manufacturing Company did have interest in said

litigation as principal defendant. All its interest in *th plant only*, was sold at the receiver's sale at Hamilton, bu this by no means exhausted all the assets of the company At the time of the sale of this realty, the receiver of th State court still held in his possession a large amount supplies and findings, and also cash and other 'Quick A sets,' valued at about $20,000, all of which were availabl to meet the interest on the first mortgage bonds in conform ity with the express order of the State court of May 2 1889, wherein it was specially enjoined on said receiver pay promptly 'out of any funds of the corporation he ma have so long as he remains in office' the interest on sai bonds. Suffice it, the receiver is still 'in office' and wa 'in office' on January 1, 1891, and on that date *had amp cash funds with which to have promptly paid the interest ha due demand been made upon him.*

"*Until he shall have been discharged he is still the leg representative of the State court and charged with certa duties thereunder, and the corporation not defunct.*'

Part II, p. 153.

The record (answer of defendants) also shows on its fac the following facts:

That said Robinson and L. Lanier were stockholders an directors of the Alabama and Georgia Manufacturing Com pany, mortgagor.

Part I, p. 18.

That said "L. Lanier was not a party on the record i said litigation (in the State court) with the old compan but was a *witness for complainants therein and a most acti worker for them.* Before said decree was taken complai ants' counsel had to and did consult said L. Lanier to s if he would consent thereto, and he did so consent. * * Said Laniers are interested in a rival cotton mill on th same river, about 2½ miles above this mill, and these d fendants think said Laniers are much more interested

crippling the Huguley Manufacturing Company than in collecting said coupons or bonds."

Part I, pp. 22–3 and 27. (Ans. of Defts.)

And the evidence of John C. Orrick, St. Louis, recites:

"I know that Mr. Lanier was the chief instigator among the bondholders of the foreclosure proceedings. That the Huguley Manufacturing Company had deposited the interest money at the bank at Atlanta, Ga., and that he, with others, wrongfully refused to accept the money in payment of their coupons due at that time. That Lanier was interested in breaking down the Huguley Manufacturing Company, as it was a competitor of a mill which he managed a few miles off."

Part II, p. 55.

In the case of Tyler, petitioner, it was held that property of the South Carolina Railway Company, which was in the possession of a receiver duly appointed by the Circuit Court of the United States for the District of South Carolina, was not subject to seizure and levy under a process issuing from a court of the State to enforce the collection of a tax assessed upon the property of the railroad company under the laws of the State. The court there said:

"The property in question was in the custody of the Circuit Court, in a cause within its jurisdiction, and protected by injunction. The power exercised was the power to protect the property in the custody of the court from invasion, and in order to sustain the receiver's application the ordinary grounds of equity interposition were not required to be set forth."

* * * * * * *

"No rule is better settled than that when a court has appointed a receiver, his possession is the possession of the court, for the benefit of the parties to the suit and all concerned, and cannot be disturbed without the leave of the court; and that if any person, without leave, inten-

tionally interferes with such possession, he necessarily commits a contempt of court, and is liable to punishment therefor."

Citing—

Wiswall *v.* Sampson, 14 How. 52, and a number of other cases.

* * * * * * *

"The general doctrine that property in the possession of a receiver appointed by a court is *in custodia legis*, and that unauthorized interference with such possession is punishable as a contempt, is conceded. The maintenance of the system of checks and balances characteristic of republican institutions requires the co-ordinate departments of government, whether *Federal* or *State*, *to refrain from any infringement of the independence of each other, and the possession of property by the judicial department cannot be arbitrarily encroached u on, save in violation of this fundamental principle.*

"The levy of a tax warrant, like the levy of an ordinary *fieri facias*, sequestrates the property to answer the exigency of the writ; but property in the possession of a receiver is already in sequestration, already held in equitable execution, and while the lien for taxes must be recognized and enforced, the orderly administration of justice requires this to be done by and under the sanction of the court. It is the duty of the court to see to it that this is done; and a seizure of the property against its will can only be predicated upon the assumption that the court will fail in the discharge of its duty, an assumption carrying a contempt upon its face."

In the recent case of Pittsburg, etc., Railway Co. *v.* Loan and Trust Co., *supra*, this court was called upon to consider what constituted an invasion of the possession of a receiver, and while holding that the facts in that case did not show that the possession of the receiver had been interfered with, it adhered to the doctrine in Wiswall *v.* Sampson, and said that if the facts of the case had disclosed an actual sale of the property while it was in the possession of

receivers pending the proceedings in the foreclosure suits, the doctrine laid down in that case would apply and *such sale would have been ineffectual to pass title to the purchaser.*

"The principal authority cited in support of this contention is Wiswall *v.* Sampson, 14 Howard, 52–68, in which it was held that while real estate is, 'in the custody of the court as a fund to abide the result of a suit pending, no sale of the property can take place, either on execution or otherwise, without the leave of the court for that purpose.'"

"If the rule were otherwise," the court said, "the whole fund might pass from its hands before final decree and the litigation become fruitless. We do not perceive that the principle announced in Wiswall *v.* Sampson controls the determination of the present case. *If there had been any attempt by suit to enforce the lien given by the Parkhurst mortgage by an actual sale of the property in question pending the proceedings in the foreclosure suits, it may be that the principle announced in that case could have been invoked, and the sale would have been ineffectual to pass title to the purchaser.*

The Federal courts of the United States, as well as the State courts, have regarded as settled law and unquestioned authority the doctrine laid down in Wiswall *v.* Sampson.

In Virginia, etc., Iron Co. *v.* Bristol Land Co., 88 Federal Reporter, 134, the Circuit Court for the Western District of Virginia reviewed the decisions of this court, and held that where land of the defendant company was in the custody of a receiver duly appointed to wind up its affairs, a sale of such lands for taxes is *void and the purchaser at such sale acquires no title thereunder.* The court in its opinion said:

"The chief defense relied on by the defendants in their answers is that Smith, the treasurer of the city of Bristol, having, under the provisions of the Virginia tax law, sold the lots in question to the auditor of public accounts of the

State of Virginia for the benefit of the Commonwealth and the city of Bristol, that that was a valid sale, and that the other defendants, in pursuance of the provisions of another section of the tax law touching delinquent lands, are simply endeavoring to acquire the title which vested in the auditor for the benefit of the Commonwealth and city of Bristol. If the treasurer, Smith, had no right to invade the jurisdiction of this court, and take control of and dispose of property in the hands of its receiver; if in doing this he was in contempt of this court, then the court is at a loss to see on what principle he could make a valid sale of this property to the auditor for the benefit of the Commonwealth and the city of Bristol, any more than he could make a valid sale to a private person.

"His authority as a tax collector to dispose of these lands as delinquent for the non-payment of taxes ceased when the proceedings were instituted for the sequestration of all the property of the Bristol Land Company. *After that no person or officer, whether State or Federal, not even the receiver himself, could sell any of the property except by an order of the court. A sale made in any other way or by any other person is null and void.*"

In the case of Scott *v.* Crawford, 41 S. W. 699 (Tex. Civ. App.), (decided in June, 1891), which was an action by Crawford and others against the Clark-Plumb Company, a Texas corporation, in which Scott had intervened and asked the court to deliver to him certain lands which he had purchased at a sale by the trustee under a power given in a deed of trust made to secure the payment of certain promissory notes, the Court of Civil Appeals, of Texas, held that the sale made by such trustee while the property was in the possession of a receiver regularly appointed by the district court of the United States was *absolutely void*. The court in its opinion follows the decision of this court in Wiswall *v.* Sampson, and says:

"We are inclined to think that the sale made by the

trustee while the lands were in the possession of a receiver *is void and cannot be sustained* (Ellis *v.* Water Co., 86 Tex. 109; 23 S. W. 862; Wiswall *v.* Sampson, 14 How. 52.) It is true that in this case the sale had been made *under an execution issued by another court than the one in which the receivership was pending and not under and by virtue of a deed of trust and power of sale* as in this instance; but the writer at least can see no good reason why the rule should not apply with equal if not greater force, in the latter case. In Wiswall *v.* Sampson, *supra*, the Supreme Court of the United States say: 'The settled rule also appears to be that where the subject-matter of the suit in equity is real estate which is taken into the possession of the court pending the litigation by the appointment of a receiver or by sequestration, the title is bound from the filing of the bill; and any purchaser *pendente lite*, even if for a valuable consideration, comes in at his peril.' Again the court says: 'As we have already said, it is safe for the disposition of this case to hold that *while the estate is in the custody of the court as a fund to abide the result of a suit pending, no sale of the property can take place either on execution or otherwise without leave of the court for that purpose*, and upon this ground we hold that the sale by the marshal on the two judgments was *illegal and void and passed no title to the purchaser.*' If this invalidity results from the 'title being bound' when the land is placed in the possession of a receiver, as is declared by this decision, *then no sale of any character, whether under deed of trust, power of attorney, process of court or otherwise, can affect the title in the hands of the receiver if made without consent of the court having custody thereof.*"

"The principle applied in Wiswall *v.* Sampson, *ubi supra*, must be regarded as firmly established in the decisions of this court. It has been often approved and confirmed. Peale *v.* Phipps, 14 How. 367; Hagan *v.* Lucas, 10 Pet. 400; Williams *v.* Benedict, 8 How. 107; Pulliam *v.* Osborne, 17 How. 471; Taylor *v.* Carryl, 20 How. 583; Yonley *v.* Lavender, 21 Wall. 276; People's Bank *v.* Calhoun, 102 U. S. 256; Barton *v.* Barbour, 104 U. S. 126; Covell *v.* Heyman, 111 U. S. 176."

Other cases affirming the doctrine of Wiswall *v.* Sampson are:

Walling *v.* Miller, 108 N. Y. 172, 177.
Russell *v.* Railway Co., 68 Tex. 652.
Gay *v.* Brierfield, 94 Ala. 310.
Dugger *v.* Collins, 69 Ala. 330.
See also Heidritter *v.* Elizabeth Oil-cloth Company, 112 U. S. 294.

The Court of Appeals of Virginia, in a suit which went to that court from the Circuit Court of the United States for the county of Alexandria, in the District of Columbia, after that county was retroceded to Virginia, held that commissioners to sell (trustees), appointed to execute a decree of the lower court, proceeding to sell under such decree, after an appeal taken and supersedeas bond given, were guilty of a contempt of the appellate court, and their acts were *null* and *void as to the rights of the parties to the appeal.*

McLaughlin *v.* Janney, 6 Grattan (Va.), 609.

No stronger statement of the doctrine here relied upon is to be found anywhere than in the case of Day *v.* Postal Telegraph Company, 66 Md. 354, 367, 368, in which case Mr. Chief Justice Alvey, delivering the opinion of the court, said:

"But whatever may have been the purposes and designs of the parties professing to represent these companies in the transactions between them, it is very clear, upon most unquestionable authority, that after the affairs of the New York company had been placed in the hands of receivers by the Supreme Court of New York, which was on the 3d of May, 1885, and so likewise after receivers had been appointed by the court in this State, *nothing could be done whereby the status of the affairs of that company could be*

effectually changed, or its rights in any way lessened or prejudiced, without the sanction of the court having jurisdiction of the subject-matter. Any person relying upon such transaction for his protection, must show that what was done was done with the sanction of the court. The receiver is but the officer or agent of the court from which he derives his appointment, and his possession is exclusively the possession of the court; the property being regarded as in the custody of the law, *in gremio legis*, for the benefit of whoever may be ultimately determined to be entitled to its possession (High on Rec., Secs. 134, 139). And this strict rule forbidding the interference of a third party with the possession of the receiver, without leave of the court, applies without regard to the fact, whether such party claims paramount to or under the right which the receiver was appointed to protect (High on Rec., Sec. 139; Evelyn *v.* Lewis, 3 Hare, 472)."

The doctrine here laid down is simply an amplification of what is said in 2d Daniel's Chan. Pl. and Pr., 1431, 1433 (3d Amer. from 3d Eng. ed.):

"A receiver appointed by this court is appointed on behalf of *all* parties, not of the plaintiff or of the defendant only; therefore if any loss arises from deficiency in his accounts, the estate must bear it. The effect of the appointment, however, is not to oust any party of his right to the possession of the property, but merely to retain it for the benefit of the party who may ultimately appear to be entitled to it, and when the party entitled to the estate has been ascertained, the receiver will be considered as *his* receiver.

"The rule that the possession of a receiver is not to be disturbed extends even to cases in which he has been appointed expressly *without prejudice* to the rights of persons having *prior* estates, and the individuals having *prior* estates must, if they wish to avail themselves of them, apply to the court to bring an ejectment or to be examined *pro inter esse suo*, and this although their right to take possession is clear. In this respect there is no distinction

between possession by a receiver and that by sequestrators under a commission of sequestration."

"A judgment entered by a court without jurisdiction is *void* and will be held such—on appeal in the same proceeding."

Am. and Eng. Ency. of Law, Vol. 12, p. 311, Note 1.

IX.

*The trust deed having expressly stipulated and provided that, as condition precedent to foreclosure, due presentment and demand must be made "at the office of the Company in West Point, Georgia," and should "default be made in the payment of said bonds * * * or in the payment of interest," * * * and that the interest or bond "shall remain unpaid for six months"* **after notice is served on the president of said company**, *and the record showing on its face that there was such office and president, and that no presentment, demand or notice, or any pretence of such made at any place or of any official or person competent to answer for said company—except by the holders of the* $22,000.00 *of minority bonds, who were promptly paid—the Circuit Court of the United States for the Northern District of Georgia was without jurisdiction to ignore the express terms of a contract and arbitrarily decree a default in the interest and authorize foreclosure as to any of the bonds, said condition precedent having been utterly disregarded.*

This proposition has been so ably pressed upon the attention of this court in the initial contention of Hon. John T. Morgan, on the "argument and brief on the merits of the case" (green cover, pp. 6–12), wherein he has adopted and incorporated, as part of his own, the former forcible presentation of the same question in the Court of Appeals,

by Hon. Robert C. Brickell, ex-Chief Justice of Alabama (pp. 13–22), that only because of its important bearing upon the case in its very first stage do we deem it necessary to do more now *en passant*, then to beg this court's attention to all said in these convincing arguments from such recognized authorities.

X.

When the mandate of the Circuit Court of Appeals reversing the decree of foreclosure, and remanding the case to be proceeded with according to the views expressed in its opinion, one of those views being that the error in the reversed decree was such as to vitiate all subsequent proceedings, was filed in the lower court, and it appeared on the face of the record that the complainants themselves, the bondholders, had purchased the mortaged property at the sale made under the reversed decree, it was the duty of the lower court to order restitution of said property to the defendant, the Huguley Manufacturing Company, without imposing upon it the condition of first paying into the registry of the court the sum of ten thousand dollars, all of which had been expended by the court and complainants in the payment of claims and demands for which neither the property nor the defendants were liable at law or in equity. The Court of Appeals erred in approving this conditional restitution.

It is too well settled for controversy that a reversal of a decree under which a party to a suit has acquired title or possession annuls the title and right of possession, and entitles the party who has been dispossessed *to prompt* restitution.

Herman on Execution, Ch. 608.

Freeman on Judgments, Secs. 481, 482.

Walker's Am. Law, p. 496.
Beach on Modern Equity Practice, Sec. 993.
Ex parte Walter Bros., 89 Ala. 239.
Galpin *v.* Page, 18 Wall., p. 373.
Northwestern Fuel Co. *v.* Brock, 139 U. S., p. 216.

In Foster's Fed. Prac., 2d ed., Sec. 495, the rule is thu stated:

"Where a judgment or decree which is reversed ha been executed pending the writ of error or appeal, th mandate should include a direction to the court below t compel restitution."

The rule as stated by Mr. Freeman (*supra*, Sec. 481), i as follows:

"The reversal of a judgment by any competent authorit restores the parties litigant to the same condition in whic they were prior to its rendition. The judgment reverse becomes mere waste paper, and the parties to it are allowe to proceed in the court below to obtain a 'final determina tion of their rights' in the same manner and to the sam extent as if their cause had never been heard or decide by any court. Neither, in the subsequent prosecution o the cause, can suffer detriment nor receive assistance fro the former adjudication."

That this is law of Georgia is shown by Ragan *v.* Cuyle 24 Ga., p. 400.

The same author says again (Sec. 482):

"Upon the reversal of its judgment against him, the a pellant is entitled to the restitution from the responde of all the advantages acquired by the latter by virtue of th erroneous judgment. The successful appellant is entitle to a restitution of everything still in possession of his a

versary *in specie;* not the *value* but the *thing.* * * * If the plaintiff purchase the property of the defendant at a sale under a judgment or decree, his title will be defeated by a subsequent reversal. * * * The right to restitution cannot in any case be resisted on the ground that on final hearing of the cause it will appear that the party of whom restitution is sought is entitled to the property of which he got possession, or of the money which he received under the reversed judgment."

The following clear statement of the principle and its *rationale* is found in *ex parte* Walter Bros., 89 Ala. 239:

"We can conceive of no case in which a party, who pays money on a decree which is subsequently reversed, is not entitled to have restitution of what he has paid, and to be reinstated in the position, and to all the rights he had prior to the rendition of the erroneous decree. It is not material what those rights were, or would probably, or even certainly and necessarily be determined to be, in the further progress of the litigation. He is entitled to have his final equities adjudicated while he yet occupies whatever vantage ground was his in the inception of the contest, and from that standpoint to invoke the judgment of the law on the issues he presents. When he asks, after the reversal of a decree which has erroneously adjudged his rights and disturbed his relations in the case, to have his original status restored, it is no answer to his petition to say that, on a final hearing of the cause, it will again be decreed that he pay that of which he now seeks restitution. To so hold would be to prejudge the case, to decide in advance of the submission of the issues on pleading and proof that the party, who has been put at a disadvantage by the execution of a wrongful decree, though properly before the court, is not entitled to any relief in the cause. On the other hand, we are unable to see any predicate for the claim of the other party to retain what, confessedly, he has wrongfully received. He had no right to the money involved in the litigation, in contemplation of law, until there should be a correct determination of the matters in

dispute, however clear his rights may have been, in point of fact. He, therefore, proceeds with the cause, having an undue advantage of his adversary, and is in fact in the attitude of having gained what he claimed before his right to it had or could have been determined. We entertain no doubt, therefore, of the absolute right to have restitution made on the one hand, and the absolute correlative duty to make restitution on the other, wholly regardless of considerations looking to the final equities of the parties."

To same effect, see—

U. S. *v.* Bank of Washington, 6 Pet. 19.
Morris Cotton, 3 Wall. 507.
Ex parte Morris, 9 Wall. 65.
The Rachel *v.* U. S., 6 Cranch, 329.
Perrin *v.* Lepper, 56 Mich. 361 (Judge Cooley).

In the case at bar the court ordered restitution, but under an illegal, inequitable, and improper condition precedent, *i. e.*, that the Huguley Manufacturing Company, the owner of the property, who was not personally bound for the complainants' debts, and against whom there was no existing decree, should first pay into court the ten thousand dollars claimed to have been paid in by the purchasing complainants as part of the price of their bid.

We know of no case in the books except this case where any such condition to restitution was imposed. In every judicial sale, where the plaintiff in execution buys, the price of the sale is paid in by him and the amount, less costs, is applied to the payment of his debt. In no instance, barring this case, has any court ever held that where the decree under which the sale is made is reversed and it is called upon to do "prompt justice," the defendant against whom there is no judgment, or order, or decree to pay money cannot recover his property from the plaintiff until he pay back in whole or in part the money paid in by plaintiff,

which has gone back to plaintiff, or has been disbursed in paying the costs of the void sale?

If the part of the fund so paid in on the void sale had been applied to the payment of past due prior liens bearing on the property sold, and the remedy by subrogation of the purchaser thereto had been lost or made ineffectual, then it would be proper and right for a court of equity to impose the prepayment of such debts of the owner as a condition to restitution.

But in this case no such equity presented itself.

The defendants were in no manner bound to pay a single dollar of the debts for which the ten thousand dollars were disbursed.

This fund was disbursed, as appears by the report of the commissioner (Part II, p. 221), as follows:

Fees of trustee's solicitors,	$2,600 00
To Robinson, trustee,	500 00
To court costs,	230 50
To special commissioner fee,	400 00
To advertising, etc.,	370 00
	$4,100 50

The balance was paid in cash as a dividend on bonds Nos. 67, 68, 70, 71, 72, 73, 74, 115, 116, 117, and 118, belonging to Mrs. S. H. Huguley.

As shown by the final decree (Part II, pp. 280–1), these identical bonds were excluded from the benefits of foreclosure and the principal thereof was declared not in default.

Before this petition of restitution had ever been filed the very court who refused it had, in this very case, decided that defendants were not liable for solicitors' fees. See opinion in Robinson *v.* Alabama and Georgia Manufacturing Co., 51 Fed. Rep., p. 268.

In the final decree in this case (Part III, p. 65) the s
court adjudged that identically the above costs, fees,
plus $2.00 additional, "*paid out under the first sale of
property, and which sale was set aside,*" *should be paid
the complainant bondholders* "*as between themselves.*"

In the same final decree (Part III, p. 66) full provi
is made for the protection of the payers of the dividen
the excluded bonds as follows:

"In making distribution, any bonds on which a
centage has been paid in cash to former holders,
credited thereon for money paid into court under the
sale of said property, shall be controlled by the perso
persons so paying the money into court for the pur
of reimbursement of such money so paid, and the pe
so paying said money shall be entitled to receive all
dends that such bonds may be entitled to until they
reimbursed the amount so credited on said bonds and
terest thereon at 8 per cent. per annum. And the o
nal holders of said bonds are not entitled to receive
percentage on said bonds until after the amount so
vanced is repaid to the person so advancing it."

And yet this same court, in insisting upon the imp
tion of the condition of paying in this ten thousand
lars, gave the ground of its action as follows:

"The judgment of the court was that restitution sho
be made only on condition that the amount of money
into court by the purchasers should be repaid to them
fore possession would be restored. As stated in the o
ion alluded to, the effect of the judgment of reversal
not only to set aside the decree, but, as it seemed, to an
subsequent proceedings. Still, when the purchasers of
property paid into court the $10,000, they paid it unde
decree valid and subsisting at that time, *and they really p
the money for the benefit of the Huguley Manufactur
Company. The money was paid into court and paid*

for costs due by them, and on their debts, and they received the benefit of it. Certainly not to require repayment to the purchasers of this amount before restitution would seem to be inequitable. This much is stated now, as it was stated orally at the time of rendering the decree for restitution," etc.

Robinson *v.* Alabama and G. Mfg. Co., 67 Fed. Rep., pp. 194–5.

As will be seen later on, this is not the only instance where the court has "blown both hot and cold" as to the rights of these petitioners.

The purchasers went into possession of defendants' property on September 16, 1892.

The judgment was reversed May 30, 1893.

The application for restitution was made July 10, 1893 (Part II, pp. 1–8).

It was renewed and refused September 22, 1894 (Part II, pp. 239–240), after the purchasers had been in possession for more than two years, of which period sixteen months had elapsed since the reversal of the decree.

The court even refused to order a reference to take an accounting of the rents and profits during this clearly illegal detention, except upon the condition that the defendants first pay in the $10,000 (Part II, pp. 239–242). And even after it had entered this order the court cancelled it on the same day, on the ground that the "subject-matter was covered by other orders." (Part II, pp. 244-5.) So that the defendants were left out of possession of their property, with no judgment or decree against them, face to face with a coming foreclosure, and even denied the right to have an accounting before the same master, who was taking an account of the mortgage debt, of the rents and profits due by the very persons to whom the mortgage debt was due.

The only relief obtained in the Circuit Court of Appeals from these manifest errors and injustices was an affirmance,

with the suggestion in the opinion that defendants were entitled to an accounting.

Alabama and G. Mfg. Co. *v.* Robinson, 72 Fed. Rep. 709.

XI.

When the second mandate of the Circuit Court of Appeals came down, affirming the decree of foreclosure, with an opinion declaring that defendants were entitled to an accounting from the complainants of the rents and profits of defendants' property, and the court entered an order directing such accounting to be made before a special master, it was the duty of the court to stay the sale as requested by the defendants until such report could come in, in order that the amount of such rents and profits could be applied to the reduction of the decree in case the court should hold, as it afterward held, that they were so applicable. Opportunity was given to the court to correct this error when application was made to confirm the sale, but it persisted in that error. The refusal of the Circuit Court of Appeals to consider this gross inequity, specially assigned as error, amounted to a denial of justice by said court.

The Circuit Court was induced to retire from the position that defendants were not entitled to an accounting for rents and profits by the following clause in the opinion of the Circuit Court of Appeals:

"The Circuit Court having decreed that the defendants were entitled to restitution on condition, which decree was not fully executed because the condition was not met, and having decreed a foreclosure and sale of the property, will, of course, have an account taken of the proper receipts and disbursements incident to the custody and operation of the mortgaged property, *and of the rents and profits earned, or that should have been earned since its delivery to the purchasers under the former sale, and make such further orders*

in reference to the conflicting claims of parties in the distribution of the proceeds of the sale and ultimate settlement of the proceedings as to justice and equity may appertain."

Surely a court of equity ought to have construed that sentence as directing it to hold up the sale until such accounting should come in of such rents and profits, due by the very persons in whose favor the decree of foreclosure had been entered. Particularly ought such a court have been moved to such a construction, when it knew that defendants had at that time been kept out of possession "of a large and going factory for the manufacture of cotton goods, employing many operators, carrying a considerable stock of quick assets," for *three years and eight months* (the mandate of the Circuit Court of Appeals was filed in the lower court March 10, 1896), when it knew that the profits of the operation of this property had been pocketed by the mortgage creditors, when it knew that it had adjudged that these profits belonged to defendants, and when it knew that these profits were, in its opinion, applicable to the payment and extinction of the mortgage debt.

The refusal of the court to stay the sale until the report on rents and profits could come in, and the order of the court in confirming said sale, made while the reference on said report was pending, was, in the language of your honors, used in the case of Chicago and Vincennes Railroad Co. *v.* Fosdick, 106, p. 75, speaking of the rights of a mortgagee, "a substantial and serious wrong," and a grave infringement upon defendants' right to redeem, which your honors also declared in that case (p. 71) a "favorite equity."

The decree of foreclosure in this case was for $45,000 of principal, with 8 per cent. per annum from November 1, 1894, and $17,005.92 past accrued interest; and defendants were ordered to pay this sum, $62,005.92, with 8 per cent. interest on $45,000 thereof, from November 1, 1894, within

twenty days, and under the decree they could not escape foreclosure unless they paid this sum. The court found, long subsequent to the sale, made the second Tuesday in May, 1896, that on April 30, 1896, there was due to the defendants by the purchasers, $35,857.54. If this sum had been then deducted from the decree, as it ought to have been, these defendants could have redeemed their property and prevented a sale by paying only $26,148.38.

The difference between the ability of a corporation divested for three and two-thirds years of the possession of its only asset, a going cotton mill, to raise $62,005.92, and to raise $26,148.38, is very great, especially in the South, where capital is scarce and hard to get, and particularly was this true in 1896, when the whole country was in the throes of a financial convulsion due to the free-silver agitation.

Defendants in their opposition to the confirmation of the sale (Part III, p. 23), offered to bid $200,000 for the property, if the court would set aside the sale and allow their claim for rents and revenues to be determined before said property should be sold.

We presume to assert that it is a primary and fundamental principle of equity that where a mortgagee gets into possession without a foreclosure, or under a foreclosure which is vacated by reversal or by fraud or otherwise, the mesne profit should be credited on the debt.

An instructive illustration of this principle is found in Fort *v.* Roush, 104 U. S., p. 142, where this court reversed a decree for rents and profits against a mortgagee, whose title, taken under a foreclosure decree, had been annulled, because the amount due on that decree had not been reduced and cancelled by the amount due on the foreclosure decree.

It might have happened, and as we conscientiously believe

ought to have happened, that in addition to the $44,367.66 of patent errors proven on the face of the forged books, and admitted by the accounting parties, the report of the master on mesne profits should have shown a balance due defendants exceeding one hundred and seventy-five thousand dollars ($175,000.00). We base this opinion on the conclusive testimony in the record, ignored by the master under his ruling as to the meaning of wilful default, concerning the previous record of this same mill, and the contemporaneous record of other mills in the same State engaged in the same business. One understands the necessity of producing *false and forged* books when the effort is to maintain that a mill operated by an unfreezable water power, during a fairly prosperous period, with 159 looms and 5,692 spindles, consuming 5,415,999 pounds of cotton, and producing 9,159,561 yards of duck, lost in three years and eight months $4,654.60.

We say, therefore, it might have happened that such report would show such a sum—more than sufficient to wipe out the whole mortgage debt thrice over.

Whether the amount so due be greater or less than the mortgage debt the principle remains the same.

To deny relief where the mortgage debt is reducible by one-half differs from denying relief where the mortgage debt is paid thrice over, only in degree but not in kind.

We have no means of accounting for the action of the Circuit Court of Appeals in ignoring the assignment of this and other vital errors made on the record and urged upon their consideration.

We have always been of the opinion, perhaps erroneous, that a litigant has the same right to ask the judgment of a court of last resort on his material assignments of error that he has to ask a decision from a *nisi prius* judge on the separate material averments of his declaration, and

that to constitute justice every substantial question which involves a right to life, liberty or property must be stated, considered and decided.

It is from this point of view that we charge that the failure of the United States Circuit Court of Appeals to state, consider and decide this and the other material assignments ignored by it "*amounts to a denial of justice.*"

XII.

The only justification in law or equity which the courts below could bring forward for the refusal to stay the sale of defendants' property until an accounting could be had for rents and profits, and for confirming said sale when made, was that the rents and profits belonged to the Huguley Manufacturing Company and were not applicable to the payment of the mortgage debt, for which that company was not personally bound. Therefore, after having refused to postpone the sale, and after confirming it when made, it was error for the court to apply the amount found in favor of the Huguley Manufacturing Company for rents and profits to the satisfaction of an alleged balance on a decree rendered only against The Alabama and Georgia Manufacturing Company.

This proposition is self-evident. If there were no right or equity to stop this sale until it could be sold only for the amount actually due on the mortgage, by the application thereto of the amounts due by the holders of the mortgage bonds for years of rents and profits of the mortgaged property, then such want of right or equity could arise only out of the fact that the Huguley Manufacturing Company, who was not personally bound for the mortgage debt, against whom no decree had been sought or rendered for the debt, was the sole owner of such rents and revenues, and that they were not applicable to the payment of the mortgage debt.

One or the other horn of the dilemma must point the truth.

If the rents and profits were applicable to the mortgage debt, then it was a gross wrong and inequity to sacrifice defendants' property under a decree for more than was due on the mortgage.

If the rents and profits were not applicable to the mortgage, then it was proper for the court to refuse to stay and to confirm the sale, but it was wrong and inequitable to apply rents and revenues to the payment of the deficiency due on the mortgage after the sale, under a personal decree against the other party defendant.

In this connection, and without undertaking to do more than state a few general propositions of law applicable to the case at bar, and cite a few authorities in support, appellants respectfully submit as follows:

First. The Huguley Manufacturing Company entitled to the rents and profits on general principles of law..... 64–72

Before citing the authorities, we premise that they fully sustain three propositions:

(1st.) That the mortgagor or his assigns is entitled to the possession and to the rents until such possession is lawfully terminated.

(2d.) That in the absence of foreclosure proceedings, such possession cannot be terminated by a trespass or without the consent of the mortgagor or his assignee; and, lastly—

(3d.) That during proceedings in foreclosure, the rents and profits can be intercepted only through a receiver lawfully appointed.

These lead to the resultant proposition that if possession

is acquired otherwise than in one of these lawful modes, the mortgagee is liable to the mortgagor or his assignee for the rents and profits, and that in a suit to recover them, neither the existence of the mortgage nor that the rents are specifically pledged, can be pleaded in defense. *Ex parte* Walter Bros., 89 Ala.

FIRST AS TO THE GENERAL RIGHT OF THE MORTGAGOR OR HIS ASSIGNEE TO POSSESSION AND THE RENTS AND PROFITS UNTIL LAWFULLY TERMINATED.

Freedman's Savings & Trust Co. *v.* Shepherd, 127 U. S. 494.
Teal *v.* Walker, 111 U. S. 242.
Grant *v.* Ins. Co., 121 U. S. 117.
Central Trust Co. *v.* Wabash R. Co., 30 Fed. 332.
Omaha Hotel Co. *v.* Kountze, 107 U. S. 609.
(See Kountze *v.* Omaha Hotel Co., 17 Otto, 378–402).
Am. & Eng. Enc. of Law, p. 823, citing—
Scott *v.* Ware, 65 Ala. 174.

As far back as 1846, in Davis *v.* Anderson, 1 Ga. 176, the Supreme Court of Georgia decided:

"A mortgage in Georgia is nothing more than a security for the payment of a debt, and the title to the mortgaged property remains in the mortgagor until foreclosure and sale in the manner pointed out by the statute."
Reaffirmed in Ragland *v.* Justices, 10 Ga. 66.
Elfe *v.* Cole, 26 Ga. 197.
Vason *v.* Ball, 56 Ga. 269, 270.

In the case of the United States *v.* Athens Armory in 35th Ga., page 344 (5), the United States Circuit Court for the Northern District of Georgia, follows this rule as being the proper one for the Federal Courts. Judge Erskine, de-

livering opinion, says: "A mortgage in Georgia is only security for a debt; the title to the property remains in the mortgagor. This is fully settled as a rule of property by a series of State adjudications, and where such is the case the Federal Courts adopt the decision of the State Courts." (This was a decision of the Federal Court deemed of sufficient importance to incorporate it in the Supreme Court Reports of the State.)

In the case of Green *v.* Coast Line Railroad Company, 97th Ga., the court holds that unless a mortgage upon property be also upon the income, a mortgagee out of possession has no claim upon the income. They say, further, that this is true in Georgia, although the income accrue from the property while in the hands of a receiver, citing the case of Vason *v.* Ball, 56th Ga., page 268.

Sec. 2725 of the Civil Code of Georgia, is as follows: "A mortgage in this State is only security for a debt, and passes no title."

This doctrine is not confined to Georgia, but is the prevailing doctrine in the United States.

See adjudication by Newman, J., Part II, pp. 233–9, and by Court of Appeals (McCormick, J.), 72 Fed. 708, *et seq.*, awarding and confirming rents in favor of the Huguley Manufacturing Company as movant and intervener.

No Deficiency Decree was Prayed in the Bill.

That it was necessary to pray specifically in the bill, for a decree over for the balance, see—

Windsor *v.* McVeigh, 93 U. S. 274 (23: 914).

The Amount Ascertained was not Due when the Bill was Filed.

See Alabama & Georgia Mfg. Co. *v.* Robinson, Trustee, 56 Fed. 690–3.

Ohio Central Ry. Co. *v.* The Central Trust Co. of N. Y., 133 U. S. 561–4 (S. C. Rep. ed. Bk. 33, 83–92).
Fosdick's Case, 106 U. S. 48, 71.
Wiltsie on Mortgages, citing—
Skelton *v.* Ward, 51 Ind. 46 (1875).
Howe *v.* Lemon, 37 Mich. 164.
Dunkley *v.* Van Buren, 3 Johns. (Kent) 330; Reviewed 100 Ill. 279.

There was no "Deficiency" to which the rents could be applied, and if there was it had not been ascertained so as to authorize a judgment or decree for same.

First. Amount bid had not been paid when decree of June 4, 1898,, ascertaining the alleged "Deficiency" was rendered, nor had sale been confirmed.

Noonan *v.* Braley, Admr., 67 U. S. (See S. C. Rep. ed. 2 Black, 499–509).
Orchard *v.* Hughes, 1 Wall. 73–7.
Jones on Mortgages, Vol. 2, Sec. 1709.

Second. Right of the Huguley Manufacturing Company, *res judicata.*

See—

Opinion of Newman, J., 2d P. Rec., Part II, pp. 233–239.
Opinion of McCormick, J. (C. C. A.), affirming, but *ordering accounting*, 72 Fed. 708, *et seq.*

Third. The Huguley Manufacturing Company *did not*, by purchasing the equity of redemption, become liable for the debt secured by the prior mortgage.

Fourth. No valid reason shown, even if question were open, why the fund ascertained to belong to the Huguley Manufacturing Company should be applied to the mortgage debt.

Fifth. The bondholders lost their right to apply the rents and profits, even if they ever had a right to them.

Sixth. Set off. The recovery of the Huguley Manufacturing Company cannot be set off against the mortgage debt.

Jones on Mortgages, Sec. 772.

The Zouave, 29 Fed. 296.

XIII.

10. The decree of October 15, 1898, was grossly erroneous.

(*a*) *It permitted the purchasers to set up as the ground for non-compliance with the decree of confirmation entered two years and five months before, the very ground which defendants in vain urged as a reason why the sale should not be confirmed.*

We suggested, in a previous paragraph of this brief, that there was more than one instance on this record where the court had "blown both hot and cold" as to rights of these petitioners.

At the time petitioners were pleading for a postponement of the sale, and resisting its confirmation, they set up the pending reference as to rents and profits as the ground and reason why the sale should be postponed and why it should not be confirmed when made.

The court adjudged this ground invalid for the purpose, ordered the sale, and confirmed it *conditionally* when made.

Two years and five months later the very persons who had urged the sale and its confirmation, and had induced the court to hold that the ground set up was not valid, came back to the court and *set up this very ground as a reason why they had not complied with the order of con-*

firmation, and asked for essential modifications and changes in the decree of confirmation. Against the earnest opposition of petitioner the court maintained their petition.

Their assignment of errors on this matter said (Part III, p. 95):

"Appellants insist that if the pendency of said reference and absence of a report were not a valid ground why the sale should not be confirmed, it is not a valid excuse for failing to comply with its terms, and that the court, therefore, erred either in overruling the said objections to confirmation, or in holding said excuse to be valid."

Where is there any possible escape from one or the other of these propositions?

Were not the petitioners entitled to have an answer to their cry for relief from these judgments, or from one or the other of them?

Did they not involve the question of the divestiture of their title to a valuable property?

We confidently know that this court will heed our cry and give us relief.

(*b*) *It deprived the defendants, the Huguley Manufacturing Company, of the rents and profits of its property, possession of which had been detained by the purchasers not only for the three years and eight months, from September* 6, 1892, *to May* 6, 1896, *but for said two years and five months, from May* 6, 1896, *up to October* 15, 1898 (*over six years*), *without title, and without having complied with the terms of their purchase, and arbitrarily fixed the liability of the purchasers during that period at* 7 *per cent. per annum interest on the balance due as the purchase price, in contravention of the jurisprudence of the Circuit and of this court.*

In Chicago and Vincennes R.R. Co. *v.* Fosdick, 106 U. S. 71, this court said:

"It is the deed made to the purchaser, actually transferring the title of the parties to the suit, that terminates the mortgagor's equity of redemption."

Full compliance with the terms of the sale by the purchaser is necessary to entitle him to the deed. Until he so complies the purchase is inchoate and incomplete. The order of confirmation consists essentially of two parts: First, the approval of the court of the price bid at the sale; second, an authorization to the master to receive compliance with the bid from the purchaser to and to make him a deed. Such was the order in this case (Part III, pp. 24–5):

"It is ordered, adjudged, and decreed that said sale be, and the same is hereby, confirmed in all respects, and that Samuel C. Dunlap, as such commissioner, be, and he is hereby, authorized and directed to convey to said purchasers all and singular the property and the property rights of every description described in said decree, *upon the purchaser's complying with the terms of said sale.*"

Rents accruing between the day of sale and the delivery of the deed belong to the owner of the equity of redemption.

Clason *v.* Corley, 5 Sandf. 447.
Astor *v.* Turner, 11 Paige, 436.
Mitchell *v.* Bartlett, 52 Barb. 319.

The very question presented by this record on this point was decided in the Circuit Court of Appeals for the fifth circuit, a year before this case was decided, in two very important cases, where large sums were involved—the revenues of a railroad. Boyle *v.* Farmers' Loan and Trust Company, and Huntington *v.* Same, 88 Fed. Rep. 930, C. C. A., Vol. 32, p. 142.

In those cases the Court said:

"Neither in law, nor in equity, is the purchaser under the foreclosure entitled to the earnings of the property since the decree of confirmation, because, among other things, *he has persistently delayed complying with his bid.*"

Ought not the petitioners in this cause to have received the same measure of justice that was meted out in those cases?

Suppose the lower court in those cases had given the revenues to the delaying purchaser from the date of the bid, and had arbitrarily directed the purchaser, in lieu of surrendering revenues, to pay 7 per cent. interest on the amount of his bid from the date of the confirmation; would not the Circuit Court of Appeals have been compelled to reverse that judgment?

Were they not, therefore, compelled to reverse the judgment in this case?

Was not the rent of this large and valuable mill for over six years a real and substantial issue on which the petitioners were entitled to have a hearing, and entitled to have decided according to the jurisprudence of this court and of the very court to which appeal was made?

(c) *It permitted the purchasers to credit on their bid the ten thousand dollars, with interest from the date of the first to the date of the second sale, paid in on account of the first sale, which had been distributed in the payment of debts and claims for which neither defendants nor their property were liable, full provision having been made for all these debts and claims in the final decree by adjudging in favor of defendants that* $4,102.50 *thereof should be paid by the bondholders themselves, and that the bondholders who had received the balance of the ten thousand dollars should receive no dividend on these bonds until the payers of the money into court should be reimbursed the amount received on the bonds.*

The purchasers at the second sale were not entitled to the deduction of the ten thousand dollars paid in at the first sale.

That sum had been disbursed in paying partly their own debts, decreed against them in the final decree of June 4, 1898 (Part III, p. 65), being the costs of the first sale amounting to $4,102.50, and partly the bonds of Mrs. Huguley, specially excluded from the benefits of the final decree of foreclosure. Full provision was made in the decree of June 4, 1898, as to these bonds and the payment thereon. See paragraph 8 of the decree. (Part III, p. 66.)

The effect of this decree of October 15, 1898, was to reverse the decree of June 4th, and to make the *petitioners'* property bear the burden of the costs which had been adjudged in *their* favor.

(d) It diminished the price of the sale by relieving the property from liens in addition to the price bid, laid upon it in favor of the Huguley Manufacturing Company by order of the confirmation of which liens were thereby taken off the property and charged against and made payable out of the price.

The decree of confirmation of the sale declared a lien in favor of the Huguley Manufacturing Company on the property in the hands of the purchasers, for any amount found by the master in excess of the deficiency due by the defendants to complainants in the foreclosure proceedings.

This portion of the decree of confirmation was supposed to be a sop to the Huguley Manufacturing Company in compensation for the court's refusing to maintain its objection to the confirmation of the sale.

The purchasers, by accepting that decree of confirmation, took it in all its parts and agreed to pay the price bid,

$66,000, *and in addition to that any other sum that might be found due on the pending reference.*

In their quality of purchasers only, Lanier and his associates had no interest in the pending reference.

Central Trust Company *v.* Grant Locomotive Works, 135 U. S., p. 207.

Swann *v.* Wright's Executor, 110 U. S. 590.

Compton *v.* Jesup, 167 U. S., pp. 1–35.

If the amount found due on that reference had been the $228,000, which the evidence adduced by the Huguley Manufacturing Company established in its favor, it would still have been a lien on that property in the hands of the purchasers.

That provision in the decree was intended to give security to the Huguley Manufacturing Company for the claim it was *then* and is *still* litigating.

In addition to the sum for rents and revenues there was also found by the master, in favor of that company, a judgment for $2,500, with $894.04 interest for property of that company taken possession of and converted by the purchasers. The court, in the final decree of June 4, 1898 (Part III, pp. 64–7), refused to set off this sum (less $750 costs) against the mortgage debt, and declared a lien on the property therefor in the hands of the purchaser. The proceeds of the sale which belonged to defendant's debtors, the mortgage creditors, could not be used to pay this debt. It was to be paid by the purchaser in addition to his bid. The court ordered the lien for this sum to be wiped off the property in the hands of the purchaser, and the amount thereof to be paid out of the purchase price, paid into the court. (See amendment to decree, Rec., p. 154.) It ordered all the claims of the Huguley Manufacturing Company to be transferred from the property to the fund in court, and permitted

the purchaser to pay into court only $43,433.36, with seven per cent. from May 6, 1896, when the amount that ought to have been paid in to release the property (*leaving out of view entirely the litigated claims for rents and profits*) was $66,000.00 due on amount bid and $2,644.04 due the Huguley Manufacturing Company for its converted property, with interest from date of purchase. It thus gave the purchasers an unencumbered title to the property for $48,433.36, with interest on $43,433.36 from May 6, 1899, when on the face of the papers they had agreed to pay a minimum of $81,173.69, *and to hold the property subject to any further sum the Huguley Manufacturing Company might receive.*

(c) *It subordinated the lien of the claim of the Huguley Manufacturing Company to the lien of the claims of the solicitors of the bondholders for service performed in their behalf, who, by the final decree, were given a lien only as against such bondholders, and directed payment to them of* $7,000 *out of the funds paid in by the purchaser, thereby diminishing to that extent the security of the Huguley Manufacturing Company, under the same decree which relieved the property of their lien and referred it to the fund so paid in.*

See final decree, Part III, pp. 65 and 74, making the solicitors' fees of Dorsey, Brewster & Howell a lien only "as between the bondholders themselves." See decree on petition of Lanier for absolute deed, Part III, p. 74, which orders the clerk to pay these gentlemen immediately out of the fund in court $7,000, "the same having been by a previous decree of this court adjudged to be prior liens on said proceeds *in preference to all other claims.*" To this fund, thus diminished by the payment of the personal debt of the bondholders, the claims of the Huguley Manufacturing Company are referred.

XIV.

The Hugnley Manufacturing Company, having been made a party defendant only to bar its equity in the mortgaged property, and no other decree of any kind having been entered against it, and having prevailed in its application for an accounting for the rents and profits, it was contrary to the principles of right and equity to decree against it all the costs and fees of the reference on which the accounting was had, and other costs of the cause, amounting to $4,132. The action of the lower court in this regard was purely arbitrary, and was without any assigned cause or reason, and the refusal of the Circuit Court of Appeals to notice this specially assigned error amounted to a denial of justice.

While it is true, as a general rule, that costs in equity are discretionary with the chancellor, yet "discretion is a science not to act arbitrarily." (Rock's Case, 5 Rep. 99, b.; Burgess *v.* Wheate, 1 W. Black., R., p. 123.) They generally follow the decree, and "the unsuccessful party must show the existence of circumstances sufficient to displace the *prima facie* claim to costs given by success to the party who prevails."

2 Dan. Ch. Pr. (5th Ed.) 1381.
Beach Mod. Eq. Pr., Sec. 1004.

No ground was shown in the lower court why the accountants who resisted the demand for an accounting, who contested the items of their liability, who were adjudged liable to account, and against whom a large amount was found, should not pay the costs incurred in bringing them to justice.

While the record shows on its face that the Circuit Court, after holding out to its original insistence that as

"condition precedent" to regaining possession the Huguley Manufacturing Company must pay into court these costs and attorney's fees, etc., nevertheless it *receded* from this position as late as June 4, 1898, and then decreed that same should be taxed "*as between the bondholders themselves.*" (Part III, p. 65.)

Appellants insist again that notwithstanding said circuit gave this express direction to the matter of costs, it yet passed still another decree, under date of October 15, 1898, in effect not only charging against them all items claimed as "*costs*," but added thereto $7,000.00 of attorney's fees of the West Point (or Galeton) Cotton Mills and Lanier, which, with other items aggregating $16,282.50, were *all* finally taxed at the door of these appellants (Part III, pp. 65, 74, 88–9), and this contrary to the very adjudication of said Circuit Court as late as June 4, 1898, as pointed out. Such utter inconsistency and contradiction on part of said Circuit Court, and that, too, within a period of less than four months, appeals to this court for correction since our assignments of error covering same, urged in the Circuit Court of Appeals, were ignored.

XV.

Rights of lien-claimant; acquiescence in decree; purchaser at foreclosure sale subject to liens established or to be established, bound thereby, and cannot object to enforcement of lien or a resale; trust relation set up, involving accounting for rents and profits.

While appellants contend that the pretended sale of May 6, 1896, absolutely failed, and was utterly void for non-compliance, in any event, if it could be held to be a sale, said sale was, by decree of the Circuit Court, of June 25, 1896,

confirming, in part, said sale, expressly subject to the following prior lien for rents and profits, etc., there and then vested in them, which could not be taken away nearly three years afterwards, at the mere *dictum* of said court. This was pointed out in their petition for a rehearing before the Circuit Court of Appeals (Part III, p. 99). We quote:

"3. An order of reference having heretofore been entered in this cause directing Thomas B. Fielder, Esq., to ascertain and report to the court certain claims for rents, profits, wastes, and conversions in respect to the said property, and said investigation now being in progress before said special master, it is ordered, adjudged, and decreed that should the said accounting finally result in a judgment in favor of the Huguley Manufacturing Company, then such judgment, for any amount thereof in excess of any deficiency due by the defendants to the complainant in the foreclosure proceedings, shall, for such excess, be *and remain a lien upon said property in favor of the Huguley Manufacturing Company, as against the purchasers at said sale or any persons holding under them.*

"*And the court retains and reserves the right to seize and order a sale of said property for the purpose of satisfying any such balance so found to be due as hereinbefore set out, and the title shall be made by said commissioner to the purchaser, subject to this provision.*"

Part III, page 25.

In Compton *v.* Jesup & Dixon, Trustees, 167 U. S. 55 (See S. C. Reporter's Ed., pp. 1–37), it is held in the head notes as follows:

"The right of a lien-claimant, reserved in a foreclosure decree which provides that if his lien is established he shall be paid a certain sum, in default of which the court shall resume possession of the property affected by his lien, and enforce the decree rendered in his favor 'by a resale of such property or otherwise, as this court may direct,' in-

cludes the right to a resale of the property, and is not limited to a redemption thereof.

"Persons who procure or acquiesce in a decree of foreclosure reserving the rights of a lien-claimant, and who participate in the benefits of an early sale thus secured, cannot object to the enforcement of the lien in the manner pointed out in the decree.

"A purchaser on a foreclosure sale cannot object to the terms of a decree of sale which provided for a resale on certain conditions.

"A purchaser of a railroad on foreclosure, under a decree reserving the rights of a lien-claimant, holds a trust relation which involves an accounting until the lien is disposed of."

See Compton *v.* Jesup, 167 U. S. 55.

This case is so perfectly analogous to the case at bar that it is deemed best to quote therefrom the following extracts from the opinion of Mr. Justice Shiras (decided in 1897), who held as follows:

"We think that these observations (on part of the lower court) show a plain disregard by the learned court of the terms and obvious meaning of the decree of March 23, 1889. When the terms of that decree were fixed, all parties to be affected thereby agreed to the same. The issues raised by the pleadings as to Compton's claim were *still pending and undetermined.* It was evidently the wish and the interests of all the parties to have the sale effected at once; and in order to avoid the further delay that would be occasioned by awaiting the determination of these issues, the provisions or reservations in Compton's favor were put in the decree."

[In case at bar no such consent was had, but that sale resisted.]

* * * * * *

"When, etc. * * * we do not think it was open for the court, consistently with the terms of the decree of

March 23, 1889, to deprive Compton of the rights and remedies therein conferred. * * * When the Circuit Court speaks of a resale as inequitably affecting the rights of the prior lien mortgagees and of the purchasers who have succeeded thereto, it is evident that the court overlooked those provisions of tne decree which, in express terms, subjected such purchasers to Compton's rights to a resale, if they do not choose to pay him the sum awarded by the decree. So when the court says that Compton could as well have been a bidder at the sale as at a resale, if one be ordered, it omits to notice that when the sale took place under the decree, Compton's claim was *undetermined*, but that provision had been made for him in the event that his claim was held valid. He could not safely bid because he could not foresee whether his claim would be allowed, and the arrangement made relieved him, very properly, from the perplexity to which he would have been subjected if the sale had been unconditionally made, when the fate of his claim was uncertain."

* * * * * *

[In case at bar the Huguley Manufacturing Company proposed to bid $200,000.00 for the property if the court would postpone the sale until the coming in of the master's report. Part III, p. 23.]

"The decree of March 23, 1889, under which the sale was made and confirmed on May 18, 1889, was, in all essential respects, the final decree in the case, the questions reserved being merely incidental to carrying the decree into full effect. That portion of said decree which established Compton's rights was, in its nature, final; the only matter which was kept in reserve as respects Compton was the awaiting the determination of the validity and the amount of his claim by the report of the special master. And it may well be doubted whether it was competent for the Circuit Court, at *a subsequent* term, to *disturb the rights of Compton*, defined and adjudicated at a *previous* term in the final decree of sale."

The court, after reviewing the case of Central Trust Co. *v.* Grant Locomotive Works, 135 U. S. 207, and of Swan *v.* Wright's Executor (Swan *v.* Fabyan, 110 U. S. 590), concludes:

"But we think the better view is that the Wabash Company should be regarded as a party in possession under the express terms of the order of sale, and as representing all parties in interest, including Compton; and hence cannot claim to be an absolute purchaser of the rights of a mortgagor not subject to account for rents and profits. In that point of view, there is a trust relation which involves an accounting until Compton is disposed of."

Compton *v.* Jesup, 167 U. S. 55.

The same principle is upheld by this court in other familiar cases.

Central Trust Co. *v.* Grant Locomotive Works, 135 U. S. 227.

Kneeland *v.* Am. Loan & T. Co. of Boston, Sup. Ct. ed. 34: 379.

Markey *v.* Langley, 92 U. S. 701.

Whiteside *v.* Haselton, 110 U. S. 152.

Stewart *v.* Gay, 127 U. S. 518.

Freeman on Judgments, Sec. 208.

Norton *v.* Nebraska Loan & T. Co., 35 Neb. 466, and cases cited.

XVI.

Mode of sale prescribed by mortgage must be followed on foreclosure—mortgage sales in equitable proceedings ordinarily made for cash.

Markey *v.* Langley, 92 U. S. 701.

Olcott *v.* Bynum, 84 U. S. 570.

Demarest *v.* Wyncoop, 3 Johns Ch. 34.

Chilton *v.* Alabama Gold Life Ins. Co., 74 Ala. 290.
Ex parte State Bank, 15 Ark. 264.
Dolan *v.* Mayor of Baltimore, 4 Gill, 405.
Nebraska L. & T. Co. *v.* Hamer, 58 N. W. 695, Am. Dig. 1894.
Wiltsie on Mortgage Foreclosure, Sec. 182, p. 587.

In the case at bar, the trust deed expressly stipulated and provided that in event of sale the property had to be sold for spot **"cash."**
Part I, p. 8.

XVII.

The court without power to change the terms of sale and then confirm—should either confirm or set aside the sale, but cannot modify its terms—cannot reverse, annul, or modify decree after end of its term. Such an act would have no validity.

In Rorer on Judicial Sales, Sec. 126, p. 57, it is said:

"But it (the court) cannot change the terms of sale and then confirm. Such an act would have no validity."
Ohio Loan and Trust Co. *v.* Goodin, 10 Ohio St. (N. S.) 557.
Renz *v.* Hines, 3 Kansas, 390.

To same effect, see:

Compton *v.* Jesup, 167 U. S. 1–37.
Central Trust Co. *v.* Wabash, St. L. & P. Ry. Co., 30 Fed. 332.
Black on Judgments, Vol. 1, Sec. 154.
Beach's Mod. Eq. Prac., Sec. 850, and cases cited.

XVIII.

The court without power, after the adjournment of its term, to change the "parties" to a sale. Deed can only be made to the original bidder or purchaser. If bidder fails or refuses to complete the purchase and payment, another person should not be allowed to take the property at the former bid.

"Upon a sale by a master, if the bidder to whom the property is struck off refuses to complete the purchase, the master *should not allow another person to take it at the former bid.*"

Daniell's Ch. Prac., Vol. 2 (6th Ed.), Sec. 1282, p. 1267, citing Thompson *v.* Dimond, 3 Edwds. Ch. 298.

See also Freeman on Void Judicial Sales, Sec. 46.

Carpenter *v.* Sherfy, 71 Ill. 427.

Compton *v.* Jesup, 167 U. S. 55.

In view of the foregoing well-settled principles of elementary law, we find the Circuit Court, nearly three years after the adjournment of its term, not only changing the *terms* of sale from a spot *cash* basis of sale (with the alternative of payment in bonds, which, under Lanier's bid, required surrender of every dollar of the bonds, minority as well as majority) to a three-year credit sale (~~by~~ *rents*), but we further find the said court, as late as October 15, 1898, yielding to L. Lanier's petition, which expressly admitted and recited that even the majority wing of bondholders had deserted him and which refused to permit their bonds used in the bid, and in lieu of said "purchasing bondholders," changing the "parties" to said Lanier, *individually*, or to such others as *he* might designate.

That these are admitted facts, see :

"Petition of L. Lanier for deed absolute," Part III, pp. 67–9; "Answer (of Huguley Manufacturing Co.) to petition of L. Lanier for deed," Part III, pp. 69–72, and Judge Newman's "decree upon petition for deed absolute," Part III, pp. 72–74 (yellow cover).

XIX.

"*The proceedings before the master on the reference were conducted and the report of the master was made in violation of the terms of the reference and of the seventy-ninth rule in equity prescribed by this honorable court. The refusal of the Circuit Court of Appeals to consider this assigned error amounted to a denial of justice by said court.*"

The master's report bears on its face evidence of the truth of this charge.

The assignments of error state the details with minuteness, and it is unnecessary to repeat them here.

The decree was, of course, to be construed and executed by the master in conformity to the 79th and 76th Rules, as if the same had been written in the face of it ; and from the terms of the decree so construed, the master was not at liberty to depart. See—

Foster's Fed. Prac., Vol. 1, par. 307, p. 554, citing:

Farmers' Loan and Tr. Co. *v.* C. R.R. Iowa, 2 Fed. Rep. 656.

Gordon *v.* Hobart, 2 Story, 243.

"It is the duty of the master to obey the instructions of the court ; if he fails in this, or does not furnish in his report the facts necessary to enable the court to proceed to a

final decree on the merits of the case, the report should be set aside, *even if no objections are taken to it.*"

Lang *v.* Brown, 21 Ala. 179.

2 Daniell's Chan. Prac. (6th Ed.), Sec. 1298.

"Parties accounting before a commissioner should bring in their accounts in the form of debit and credit; and be confined to the matters referred to the commissioner, and arising strictly between the parties.

"And where the commissioner allowed accounts, kept by one of the parties in his books under various heads, and which did not allude to the other party, nor did they appear to have any connection with the dealings of the party to be charged, the report allowing such accounts must be set aside, and the matter again referred to have the statement corrected."

Reed *v.* Jones & Drury, 8 Wis. 421 and 462.

See Sheffield and Birmingham Coal, Iron and Railway Co. *v.* Gordon, 151 U. S. 285.

XX.

The action of the master in admitting as evidence books and vouchers of the complainants without proof of their identity, verity or contents by those who kept the books and made the vouchers, in excluding the books when they were shown to be forged, in refusing to exclude the vouchers, and then in continuing to use the excluded books and the unproved vouchers as the basis of the accounting, was error of such a nature as to vitiate his whole report.

The refusal of the Circuit Court of Appeals to consider this specially assigned error amounted to a denial of justice by said court.

The single episode of the forged books, shown to be in the same handwriting as that of the account sales of Boynton & Co., the sellers of the product of the mills, which

were tendered in evidence as the *original* books of the Galeton Cotton Mills, the ruling of the master that he would let them "come in as a memorandum," his use of them in basing his report upon their footings and deducting from the amount due respondents an alleged loss shown by them in the operation of the mills, were sufficient to condemn this whole report apart from any other consideration.

Even if they had been original these books were not admissible in evidence in behalf of the corporation. Wharton on Evidence, Sec. 662.

And, if admissible, their genuineness and correctness ought to have been shown by the testimony of the person who kept them. Wharton on Evidence, 1131; Chaffee & Co. *v.* U. S., 18 Wall., p. 541; Nicholls *v.* Webb, 8 Wheaton, 326; Ins. Co. *v.* Weide, 9 Wall. 617.

Even the pretended books produced were incomplete and worthless. There was no day-book, no cash-book, and no stock-book (*i. e.*, a book showing the product of the mill and its disposition), and it was, therefore, impossible to check the pretended ledger.

The pretended vouchers were in the same condition as the books. The testimony of no witness who made any voucher, or who knew the contents thereof, or who conducted the transaction it purported to certify to, was taken.

To check the *forged* books, let in "as a memorandum," by vouchers of this kind was a simple travesty, and to hold that the parties entitled to the accounting were bound by the results of these pretended books and vouchers, and that these documents conclusively showed what the actual rents and profits of the mill were, and that the burden of proof was on the defendants to attack the footings shown by these books, was a wide departure from the most elementary principles of right.

There was more than one circumstance to discredit and condemn these books.

In the first place, they were produced and offered as books of *original* entry, and were afterward shown to be *FORGERIES. No explanation was ever tendered of these facts.*

In the second place, they were shown to be in the same handwriting as the pretended account sales of the product of the mill.

In the third place, they were incomplete and not accompanied by any day-book, cash-book or stock-book.

In the fourth place, when first tendered and identified by Lanier, on February 17, 1897, they were written up only to January 1, 1896. Respondents demanded that they be impounded, and the master so ordered. By some means not explained they were abstracted, and when returned on the complaint of respondents, *were written up to August, 1896. No explanation was ever made of the mysterious additions to these books*, nor did Lanier, under cover of whose testimony it was sought to establish the entries on these forged documents (books and accounts sale) *up to* January 1, 1896, ever *again* resume the witness stand for purpose of verifying that portion of said books which had been thus posted *between* said periods of January 1, 1896, and August, 1896. So that, even if the portion posted up to January 1, 1896, was not utterly discredited by the proven forgery, the latter remained unvouched for by any witness.

In the fifth place, these *forged* books were further discredited by flagrant errors and overcharges, etc., amounting to $44,367.66, which were *admitted* by defendant accounting parties, and allowed in favor of the Huguley Manufacturing Company, movants, under the name of "*rents.*" (Part III, p. 37.)

In the printed record certified up by the Clerk of the Court of Appeals and used by the undersigned on their petition for *certiorari*, and now a part of the record filed in this cause, will be found on pages 188–210, and likewise reproduced in the brief last filed under this appeal by McLaurin & Welles, and King & Spalding (white cover, pp. 46–64), certain testimony of John M. Chilton, solicitor for the Huguley Manufacturing Company, and of Jas. S. Hamilton, expert accountant, and also evidence and admissions of L. Lanier, taken before the Master at the close of the reference and on eve of submission of oral argument thereupon. The attention of this Honorable Court is invited to all this evidence as exposing a bare-faced fraud and conspiracy to palm off on a court of equity books—a ledger and journal—formally offered in evidence by the officials of the West Point Manufacturing Company and Galeton Cotton Mills, vouched for and insisted upon as being books of *original* entry, and yet "proven to the satisfaction of the Master" as patent *forgeries* by their "watermark" ("*1894*"). Appellees had relied solely upon these books, introducing no oral testimony in defence of a charge of $228,000.00 for rents due up to May 6, 1896, which the Huguley Manufacturing Company established by numerous witnesses of the very highest standing who testified in person, and whose testimony and exhibits, though admitted by the master, was afterwards ignored, he preferring to follow the forged books in preference.

The petition for an accounting was pending from March 13, 1893. The term of the accounting extended from September, 1892, to April 30, 1896. Therefore, accountants *were warned of their coming responsibility*. They could have made their accounting as clear as the noon-day sun, with a specification of detail and a wealth of original evidence of

confirmation that would carry conviction in any mind. They were business men and not greenhorns. They operated under the form of a corporation where discipline could be rigid and no divided counsels prevail. But it was their interest to show no profits. They were bound to operate the mill, and such a mill must make money. How conceal the fact that it did make money? Overcharge for cotton bought! One cent a pound on the amount consumed would reduce the profits $50,000. Undercharge for the goods sold! One cent a yard on the goods produced would reduce the profits $100,000. Pay enormous commissions, high rates of interest, large discounts on datings!

Every circumstance connected with this accounting was such as to induce a seeker after justice to scan every item and document produced by these parties with suspicion.

But how work all this so as to save for the accountants the real profits of the mill? Very simple. Let the individuals, who are the real parties in interest, buy the cotton, sell the product, receive the commissions, and charge the interest. And that is just what was done in this case. The commercial firm of W. C. & L. Lanier bought the cotton, and the commercial firm of N. Boynton & Co. sold the product, got the commissions, the discounts on the datings, and the interest. L. Lanier was one of the purchasing committee at the first sale, was the whole purchasing committee at the second sale, was president of the Galeton Mills and of the West Point Mills, to whom all the stock in the Galeton Mills had been sold. (Part II, pp. 83–4 and 231–2.

Horace Sears was treasurer of the Galeton Mills, and a member of that firm of N. Boynton & Co., and he and the other members of that firm were large stockholders in the West Point Mills.

The books of the Galeton Mills, showing what Lanier & Co. had charged them for cotton, were not enough. These persons were not the sellers of cotton but the mills' agents to buy. They could have shown, and their principals ought to have made them show, the date of each purchase, the marks of the bales, the places where bought, the price paid, and the names of the vendor; and their statements could then have been verified.

Surely the accountants owed this same obligation to the owners of the property!

Not knowing these facts, which the accountants ought to have been made to show, petitioners established what the average price cotton was, day by day and month by month, in the markets where this cotton was bought, and compared this with the average price of the cotton charged to the Galeton Mills by Lanier & Co., day by day and month by month, and demonstrated an enormous overcharge.

The master disposed of this demonstration by saying (Part III, p. 34): "The movant undertakes to establish such an inference by a comparison of the prices paid with certain average prices of cotton for specified months. It would seem that the proper way to show such overcharges, if they existed, *would be to show the date and amount of each purchase, and the market price of cotton in West Point on those days.*"

But there was before the master evidence to show these very facts in the very way he wanted them shown. The Galeton Cotton Mills' cotton book showed the date, number of pounds and price charged for cotton. The original cotton books of Atkinson & Turner, of West Point, Ga., large cotton buyers, were also in evidence, being offered by accountants. These two books were compared date by date, and they showed an overcharge for cotton amounting to $44,410.67.

The account sales of Boynton & Co., not identified by the man who made them, not verified by the oaths of the persons who conducted the transactions therein certified to, not accompanied with any proof of the disbursement of the enormous charges deducted from the gross proceeds, were not sufficient to show anything on earth except that such papers were in existence and had been sent from Boston by Boynton & Co. to the Galeton Cotton Mills.

Movants were driven to the same method of proof by average prices, day by day and month by month, to demonstrate a sale of the product below the market price. They made this demonstration beyond the peradventure of a doubt, and the master disposed of it as follows (Part III, pp. 34–5): "The movant introduced a number of witnesses who testified to the average prices of these classes of goods, and seeks to show, by a comparison of the average prices testified to by these witnesses with the average prices realized by the Galeton Cotton Mills, that the prices realized were far below what they should have been. It would seem that in impeaching the account of sales rendered by the respondent the movant ought to show that the goods at the time they were sold brought less than the market price of the same grade of goods at the time and place of sale, *and that the failure to realize the best price obtainable was by the wilful default of the respondent.* Neither of these propositions is shown by the evidence. While the evidence for the movant, in the shape in which it is presented, may suggest an inference that the goods sold for account of the Galeton Mills ought to have brought better prices, still the evidence *strongly indicates* that this product of this mill was not equal in quality to those goods to which the market price applies."

The testimony which gave this "strong indication" was that of Lanier, and Wellington, a partner of N. Boynton

& Co.—two interested witnesses, absolutely contradicted by J. S. Hamilton, Geo. W. Hamilton, Henry Harvey, T. A. Burke, R. J. Patton, Wilmer Moore, D. O. Dougherty Jos. Kingsbery, and W. S. Everett, all entirely disinterested and all engaged in the cotton duck business, as operators of competing duck mills *in the same* territory, or jobbers in duck.

But even then, allowing for all the depreciation in the quality of the duck made by the Galeton Mills, below standard duck, sworn to by these two men, and not one-third of the deficiency below the price realized was accounted for.

Wellington said the undervaluation, owing to lower quality, was from 2½ to 5 per cent. This would make 10-oz. duck, of which market value was 8.50 cents per yard, with 5 per cent. off, realize 8.07 cents, or less than one-half a cent per pound off.

Lanier said the undervaluation owing to quality was from one-quarter to one-half a cent a yard.

But the testimony showed an average deficit of 1.24 cents per yard all round. Even allowing full force to the claim of lower quality, there was an unexplained deficiency in price of .74 of a cent per yard. The allowance of this comparatively small deficiency would have made the accountants pay petitioners $62,665.84 on this item alone.

XXI.

The master's interpretation of the rule of responsibility of a mortgagee in possession, holding that "wilful default," meant fraud or wanton misconduct, and not "ordinary and reasonable diligence," was apparent in all of his findings. This was the gravamen of petitioners' exceptions in the court below, and was the complaint in the Circuit Court of Appeals-

The Circuit Court of Appeals misinterpreted and misconstrued the position of appellants, and decided this point upon the ground that the appellants wished to apply to the complainants some other or different or stricter rule than that of a mortgagee in possession. This action of the master and the court resulted in the rejection of claims of petitioners exceeding $190,000.

A mere inspection of the authorities shows that the words "wilful default" mean "want of reasonable diligence," and that the two expressions are used as the equivalents of each other.

In Daniell's Chancery Practice, 1237, it is said:

"Sometimes instead of the words 'without his wilful default' the words 'with ordinary care and diligence' are used."

Most of the cases use the terms "with ordinary care and diligence," or "reasonable diligence."

Brickell's Digest, Vol. III, 657.
2 Daniell's Ch. (6th Am. Ed.), p. 1239.
Miller *v.* Lincoln, 6 Gray, 556.
Hughes *v.* Williams, 12 Ves. 493.
Benham *v.* Rowe, 2 Cal. 387.
Schaeffer *v.* Chambers, 2 Halst. Ch. (N. J.) 548.
2 Jones on Mortgages, Sec. 1123.
Strong *v.* Blanchard, 4 Allen, 538.
White *v.* Atlas Lumber Co., 68 N.W. Rep. 359.
Richardson *v.* Wallis, 5 Allen, 78.

It is clear from the tone of the report and the rulings of the master that he did not use the terms as indicating a mere want of ordinary care and diligence, but used it in the sense of "fraud"—that the accounting parties were liable for only what they "actually earned" instead of

what they "should have earned," because they had been guilty of no fraud.

The master in his report shows what he meant by "wilful default."

In disposing of two claims, involving over $150,000.00, to-wit, overcharges on cotton bought and undervaluation of goods sold, he says (Part III, p. 35):

"Indeed, in regard to the claim of overvaluation of cotton bought, and undervaluation of goods sold, the undersigned thinks that the movant must stand by the actual results, until he can show that those results are materially different from what they should have been, and that they were brought about intentionally *or by neglect so gross as to amount to wilful default.*"

The rule of diligence as established by the U. S. Circuit Court of Appeals, fifth circuit, which became the law of the case in the accounting for rents and profits, etc. (See 72 Fed. Rep., p. 712):

"The Circuit Court having decreed that the defendants were entitled to restitution on condition, which decree was not fully executed because the condition was not met, and having decreed a foreclosure and sale of the property will, of course, have an account taken of the *proper* receipts and disbursements incident to the custody and operation of the mortgaged property and of the rents and profits *earned, or that should have been earned,* since its delivery to the purchasers under the former sale, and make such further orders, etc."

ORDER OF REFERENCE TO SPECIAL MASTER (IN CONFORMITY):

"It is ordered that this case be referred to Thomas B. Felder, Esq., for the purpose of taking an accounting of the *proper* receipts and disbursements incident to the custody

and operation of the mortgaged property, and of the rents and profits *earned, or that should have been earned*, since its delivery to the purchasers under the former sale; and to ascertain whether there has been any conversion of the property connected with said property, and the amount and value of the same; as to whether there has been any waste or damage to the property, and as to whether the same is the result of ordinary wear and tear; and as to the liability of the holders of the property therefor."

This March 16, 1896. (Part II.)

(See condensed printed record (on application for *certiorari*), p. 69).

Referring to the rule of liability or diligence, as expressly set forth in the orders quoted on preceding page, both of the Circuit Court of Appeals, fifth circuit, and also of Judge Newman, in conformity, it should be noted that Mr. Justice McCormick, who wrote the opinion in the Court of Appeals, employed the following significant and strong language in the same connection:

"This property was a large and going factory, for the manufacture of cotton goods, employing many operatives, carrying a considerable stock of "Quick Assets," *requiring competent, careful, and responsible handling.*"

72 Fed. Rep. 708.

So excellent an authority as Snell's Equity (American Notes by Lawson), defines the terms, as follows, "Gross and wilful negligence"—tantamount to "*Fraud.*"

See Hewitt *v.* Loosemore, 9 Hare, 458.

"If there be 'Wilful default or gross neglect' as to making repairs, the mortgagee is accountable. Need not show actual '*Fraud.*'"

Russell *v.* Southard, 12 How. (U. S.) 139.

2 Halst. Ch. (N. J.) 557.

In Hughes *v.* Williams, 12 Vesey, Jr., 493, it is said:

"Mortgagee in possession, though answerable, beyond fraud, for *wilful default*, is to take the fair rents and profits, not bound to engage in, and will not be allowed for speculation and adventure."

In the note to this case, it is said:

"By taking possession, the mortgagee imposes upon himself the duty of a 'Provident Owner,' and he is bound to recover what such an owner would, with 'Reasonable Diligence,' have received."

Again:

"A mortgagee personally in possession is responsible for 'reasonable' rent," citing:

Bainbridge *v.* Owen, 2 J. J. Marsh, 465.

The Lord Chancellor (Erskine) stated as follows:

"I do not mean to say that to charge a mortgagee in possession, '*actual fraud*' is necessary. It *is sufficient*, if there is *plain, obvious* and *gross* negligence, by not making use of facts within his knowledge, so as to give the mortgagor the *full benefit* that the mortgagee in possession of the estate of the mortgagor, ought to give him. If, for instance, the mortgagee turns out a sufficient tenant, and having notice that the estate was underlet, takes a new tenant, another person offering more. * * * I agree to the principle that has been stated by the Attorney-General, that it would be dangerous to say the mortgagee is not answerable except for *fraud*, and it would contradict many decrees, etc."

In Hilliard on Mortgages, pp. 418–9, it is said:

"If the mortgagee himself occupies he is accountable for the *utmost* value the land would have produced,

with ordinary care, exclusive of taxes and repairs; but if he enters into receipt of the rents, only after the rate of the rent reserved."

So, also, in Lord Trimleston *v.* Hamil, Ball & Betty's Ch. Rep., Vol. 1, p. 173, it is held:

"If the mortgagee enter into possession of the lands, he must account at their *utmost* value; he is always charged with the *utmost* value they are proved to be worth, etc."

Conclusive and overwhelming proof was adduced before the master that the prices charged for cotton used in the mill were $50,359.52 above the market price, and the prices realized for the sale of the product were $100,537.71 below the market price for the period of the accounting (*i. e.*, up to May 6, 1896).

Appellants have assigned exceptions to the report of the Master and errors in the Court of Appeals on these two items alone, as follows:

EXCEPTIONS TO REPORT OF SPECIAL MASTER.

"8. In holding and finding that the valuation of $33,737.28, credited by the Galeton cotton mills for goods on hand at the end of the period of accounting, was a correct valuation, and that no additional charge should be made against the Galeton cotton mills in favor of intervener on this account. Intervener claims and contends that the evidence shows clearly that the market value of the stock on hand at the end of the period of accounting, was as follows:

273,050 lbs. duck on hand April 30, 1896:		
Of which, in Boston, 117,832 lbs., 12½ cts. .	$14,729	00
Of which, in West Point, 155,218 lbs., 12½ cts.	19,402	25
Freight prepaid to Boston on former lot, .	707	00
Additional value on converted goods, . .	850	00
Goods at mill, unbaled, 1,691 lbs., at 12½ cts.	211	37
Cotton at mill, in process, 10,000 lbs., 12½ cts.	1,250	00
Other stock, waste, &c., 24,207 lbs., 2 cts. .	484	14
Total net value as per testimony, .	$37,633	76
Deduct valuation as per defendant's estimate,	33,737	28
Leaving a balance on this account of,	$3,896	48

which should have been charged in favor of intervener against the Galeton cotton mills in addition to the amount allowed of $33,737.28."

10. In holding and finding that no amount should be allowed in favor of the intervener against the Galeton cotton mills on account of "overcharge on cotton," bought and charged against the Galeton cotton mills by W. C. & L. Lanier. Intervener claims and contends that the prices paid for cotton by the Galeton cotton mills were largely in excess of the market prices of cotton in West Point, as shown by the evidence; and this excess, for the period of accounting, amounted to the sum of $50,359.52, which amount should have been found in favor of intervener against the Galeton cotton mills. Under this head intervener makes the following specific claims:

"(*a*) The overcharge on 610,507 lbs. of cotton, from January 9 to May 4, 1893, was one and four-tenths cents per pound, making $8,547.09, which should have been found in favor of intervener against the Galeton cotton mills; (*b*) the overcharge on 219,085 lbs. of cotton purchased during the month of June, 1893, was 1.476 cents per lb., or $3,233.69,

which should have been found in favor of intervener against the Galeton cotton mills, etc.

Intervener does not confine its claim to these two specifications, but claims and contends that the evidence shows an overcharge for the whole period of accounting, as shown by the difference in the market prices of cotton, and the prices at which it was charged against the Galeton cotton mills, of $50,359.52, as stated above.

10. (*a*) In holding and finding that the intervener should have shown to the master the amount and date of each purchase made by the Galeton cotton mills, and the market prices of cotton on those days, when it was a matter entirely and exclusively within the knowledge of the Galeton cotton mills and its officers and agents to show the amount and date of each of these purchases, and when intervener had shown the dates when they were charged, and had shown, by abundant evidence, the market prices on those days.

Intervener claims and contends that it was not incumbent on it to show the dates and amounts of cotton bought by the agents of the Galeton cotton mills for the mills, but that this duty rested upon the defendants, and that no proof having been offered by the defendants to show the dates and amounts of each of those purchases, the master should have taken the market prices at the dates when the cotton was charged on the cotton books of the Galeton cotton mills, and which were in evidence, and charge the difference between these prices and the market prices against the defendants, in favor of intervener, amounting to the said sum of $50,359.52."

11. In holding and finding that there was no liability on the part of the Galeton cotton mills to the intervener on account of its failure to sell the duck, manufactured by the mill, at the full market price of the same.

Intervener claims and contends that the product of the Galeton cotton mills was as good, or should have been as good, as the product of other competing mills, concerning which evidence was introduced before the master; and that the evidence shows, and the master should have found, that as much should have been realized per yard or per pound from the sale of the product of the Galeton cotton mills, as was realized, as shown by the evidence, for the product of the competing mills; or, in other words, the market prices for the ducks should have been realized, and that this was not done.

Intervener claims and contends that the evidence shows that the number of yards of the product sold, and the amount realized on same, as appearing on the account sales rendered by N. Boynton & Co., summarized, were as follows:

(*a.*) For 7 oz. and less than 8 oz., 1,944,638 yards, were returned at $127,497.76; whereas intervener claims and contends that there should have been realized and returned, according to the evidence, the sum of $145,445.98, showing a deficit of $17,951.22.

(*b.*) For 8 oz. and less than 9 oz., aggregating 4,510,140 yards, there is returned on account sales $286,195.04; whereas, intervener claims and contends, according to the evidence, there should have been realized and returned the sum of $389,495.51, showing a deficit of $53,300.47.

(*c.*) For 9 oz. and less than 11 oz., aggregating 2,245,301 yards, there is returned as per account sales, $197,731.71; whereas, intervener claims and contends, under the evidence, there should have been realized and returned $221,121.25, showing a deficit of $25,389.54.

In other words, to sum up for the 8,700,079 yards of product, so reported and sold, and returned, as per account sales, at $611,424.51, intervener claims and contends, under

the evidence, that the Galeton cotton mills, or the agents representing same, should have realized and returned the sum of $708,065.74; thus showing a deficit or undervaluation to be accounted for, of the sum of $96,641.23.

Intervener claims and contends that there should have been a finding in favor of intervener against the Galeton cotton mills for this difference between the amount returned by N. Boynton & Co., and the true value of the same, as shown by the evidence, to wit: the sum of $96,641.23.

The foregoing does not include the $3,896.48, deficit in valuation as to the stock on hand unsold, as already shown, the two together aggregating, as the amount of total deficit and undervaluation, the sum of $100,537.71.

Assignment of Errors.

"XI. The court erred in overruling exception No. 8 to the report of the special master:

"The master was in error, in finding and holding that the valuation of $33,737.28, credited by the Galeton cotton mills for the goods on hand at the end of the period of accounting, was correct valuation, and that no additional charge should be made against the Galeton cotton mills, in favor of appellant, on this account.

Appellant claims and contends, that the evidence shows clearly that the market value of the goods on hand, at the end of the period of accounting, was as follows:

On hand, April 30, 1896, cotton duck, 273,050 lbs.:

Of which, in Boston (freight prepaid), 117,832 lbs., 12½,	$14,729 00
Of which, in West Point, Ga., 155,219 lbs., 12½,	19,402 25
Freight prepaid to Boston, on former lot,	707 00
Additional value of converted goods,	850 00
Goods at mill, unbaled, 1,691 lbs., 12½,	211 37
Cotton at mill, in process, 10,000 lbs., 12½,	1,250 00
Other stock (cotton) waste, etc., 24,207 lbs., 2 cts.	484 14
Total net value, as per testimony,	$37,633 76
Deduct valuation, as per Lanier's estimate,	33,737 28
Leaving a net balance or deficit, on this account of	$3,896 48

which should have been charged in favor of appellant against the Galeton cotton mills, in addition to the amount allowed of, to wit, $33,737.28.

"XII. The court erred in overruling exception No. 10 to the report of the special master:

"The master was in error, in holding and finding that no amount should be allowed in favor of appellant, The Huguley Manufacturing Company, against the Galeton cotton mills, on account of "overcharge on cotton," bought and charged against the Galeton cotton mills by W. C. & L. Lanier. Appellant claiming and contending that the special master should have allowed, on this account, the sum of $50,359.52.

"XIII. The court erred in overruling exception No. 10 (*a*), to the report of the special master:

"The master was in error in holding and finding that appellant should have shown the amount and date of each purchase made by the Galeton cotton mills, and the market

prices of cotton on those days, when it was a matter entirely and exclusively within the knowledge of the Galeton cotton mills and of its officers and agents to show the amount and date of each of these purchases; and when appellant had shown the dates when they were charged, and had shown, by abundant evidence, the market prices on those days.

"XIV. The court erred in overruling exception No. 11 to the report of the special master:

"The master was in error, in holding and finding that there was no liability on the part of the Galeton cotton mills to The Huguley Manufacturing Company, appellant, on account of its failure to sell the duck manufactured by the mill at the full "market price" of the same. The evidence showing, as appellants then contended and now contend, that the cotton duck was sold at an amount less than its market value, in a large sum, to wit: $96,641.23.

"XV. The court erred in overruling the 14th ground of exception to the report of the special master:

"Appellants then contended and now contend, that the special master erred in admitting and using, as original evidence, the "account of sales" made by N. Boynton & Co., to the Galeton cotton mills, and in using the same as being a correct report of sales, made by N. Boynton & Co., of the product of the mill, the testimony not having been sufficient, as appellant contended and now contends, to show that these accounts of sales were correct, or that they showed correctly the receipts and disbursements made by N. Boynton & Co. on account of the sale of the product of the mills during the period of accounting.

"Counsel for appellant, The Huguley Manufacturing Company, did not object to these accounts of sales going in evidence as showing, in connection with the testimony of L.

Lanier, the amounts of money actually paid by N. Boynton & Co. to the Galeton cotton mills, but did object to their being used by the master, as correctly showing the amounts actually received for the mill products by N. Boynton & Co., there having been no sufficient nor independent evidence, as counsel for appellant contended and now contends, that they correctly represented the actual and proper receipts and disbursements on that account."

All of this testimony was ignored by the master on the ground that there had been no "wilful default," or, as he defined it, no "negligence so gross as to amount to wilful default."

XXII.

We shall call the attention of your Honors to one more gross error on this record which involves a large sum of money. The cotton book of the Galeton Mills showed that there had been bought and paid for 5,408,341 pounds of cotton. They further showed that 5,283,028 pounds of this cotton had been opened and consumed, leaving unaccounted for 125,313 pounds, which, at 8¼ cents, was worth $10,338.32.

The master disposed of this claim as follows (Part III, p. 33):

"It was further claimed by the movant that a large amount of cotton which should have been accounted for was not accounted for. It was sought to show this by a comparison of the total amount of cotton bought for the mill with the amount which the books show had been opened for the purpose of being manufactured. The evidence shows, however, that the Galeton Cotton Mills at times sold *some of the cotton on hand*, which *presumably* was not needed at the time, and that the *proceeds of these sales have been credited on the treasurer's accounts.* While

this claim does not seem to have been insisted on, it is enough to say that the evidence does not authorize any finding against the Galeton Cotton Mills for any such shortage."

Having charged this cotton against the mill, it was the duty of the accountants to show that every pound of it had been used or otherwise accounted for—not to account for *some of it*, but all of it. There is *only one* credit for cotton on the statement of the books produced by Lanier, and that is charged as "error in the price of cotton," and amounts to *only* $2,509.24. What the amount of these pretended credits were the master does not find. The only satisfactory finding he could make was that these credits covered the 125,313 pounds of cotton (over two hundred and fifty bales) shown by the books to be short. In this respect his report is vicious on its face.

His error in this matter was made one of the exceptions to his report (Part III, p. 41). The lower court ignored that exception. See opinion of Judge Newman on exceptions (Part III, pp. 40–53). It was specially assigned as error in the Circuit Court of Appeals (Part III, pp. 81–2, Assignment No. X). It was equally ignored in that court.

XXIII.

The deduction by the master of $4,654.60, *with* $469.72 *of interest thereon, from the aggregate allowed petitioners* ($44,367.66), *as a net "loss shown by books" of Galeton Cotton Mills during their operation of petitioners' property for three and two-thirds years, was absolutely without warrant of law or fact to support it. This error was specially assigned as one of the exceptions to the master's report in the lower court, but the exception was overruled without consideration thereof by the court. It was again specially assigned as error in the Circuit Court of Appeals and was there again ignored by the court, which amounted to a denial of justice by said court.*

The above proposition proves itself when it is remembered: First, that the books of the Galeton Mills were not in evidence; second, that the testimony of Lanier as to what the books not in evidence showed on this point, was based on a statement made up from these *excluded* books, not by himself, but by *somebody else;* third, that respondents could not be made to pay a sum claimed to have been lost by the mortgagees in the operation of the mill.

An inspection of the opinion of the Circuit Court shows that the exception on this point to the master's report was ignored. The Circuit Court of Appeals did likewise.

XXIV.

The record on its face shows that the cost of this property was $350,000.00, *its insurable value* $250,000.00, *and net earnings of the mill, covering a period of ten years immediately preceding its surrender to incumbents had, under the Huguley management, earned net profits of over* $40,000.00 *per annum, average, and for the period of accounting taken up to May* 6, 1896, "*should have earned,*" *according to the evidence adduced by numerous expert witnesses for the Huguley Manufacturing Company, the sum of* $228,000.00.

In support of the foregoing statement, see testimony of Wm. T. Huguley, and exhibits attached ("B" and "C,") Part II, pp. 138–9, 150–2 and 178–180. See, also, Admission of L. Lanier, under his statement (Exhibit "C,") Part II, p. 180.

And as to insurance and insurable value, see Testimony and Exhibits of M. B. Torbett, insurance expert and agent, Part I, p. 44, and Part II, p. 178.

XXV.

Summary.

We respectfully urge upon your Honors that this is a case deserving the weightiest consideration of this Honorable Court. The question of jurisdiction of the United States Circuit Court for the Northern District of Georgia to interfere with the State Chancery Court, whose jurisdiction had first attached and which was still holding, through its receiver, the trust property for the express purpose of meeting the interest coupons, and the further question as to its jurisdiction thus assumed over either parties or subject-matter (the *res* lying wholly in Alabama), and there being both a misjoinder and non-joinder of *indispensable* parties, and the refusal of the Circuit Court of Appeals to apply its *own* jurisprudence in the matter of the rents and revenues of the property in the long interval between confirmation and compliance, and the gross and material errors and inequities committed in the Circuit Court against petitioners, all left untouched, undiscussed and unredressed in the Circuit Court of Appeals, appeal to this court for the exercise of its supervisory jurisdiction.

Respectfully submitted,

EDGAR H. FARRAR,
BENJAMIN F. JONAS,
ERNEST B. KRUTTSCHNITT,

JOHN M. CHILTON,

Counsel and Solicitors for the Huguley Manufacturing Company et als.

Office Supreme Court U.S.
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CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 442

THE HUGULEY MANUFACTURING CO. ET AL.,
Appellants,

v.

THE GALSTON COTTON MILLS ET AL.,
Appellees.

APPELLEES' MOTION TO DISMISS.

LOUIS D. BRANDEIS,
WILLIAM E. BENDAR,
Counsel for Appellees.

Supreme Court of the United States.

OCTOBER TERM, 1901.

THE HUGULEY MANUFACTURING COMPANY ET AL., APPELLANTS,

v.

THE GALETON COTTON MILLS ET AL., APPELLEES.

To HON. JOHN T. MORGAN,
Washington, D.C.,
Counsel for the appellants in the above entitled cause.

GENTLEMEN:

Please take notice that on the twenty-eighth day of October, A. D. 1901, at the opening of the court, or as soon thereafter as counsel can be heard, the motion of which the foregoing is a copy will be submitted to the Supreme Court of the United States for the decision of the court thereon.

Annexed hereto is a copy of the brief of argument to be submitted with the said motion in support thereof.

Yours very truly,

LOUIS D. BRANDEIS,
WILLIAM H. DUNBAR,
Counsel for the Appellees.

15458

Supreme Court of the United States.

OCTOBER TERM, 1901.

IE HUGULEY MANUFACTURING COMPANY
ET AL., APPELLANTS,

v.

THE GALETON COTTON MILLS ET AL.,
APPELLEES.

Appellees' Motion to Dismiss.

Now come the Galeton Cotton Mills, J. J. Robinson
d L. Lanier, the appellees in the above-entitled cause,
pearing by their counsel in this behalf, and move the
urt to dismiss the appeal in the above-entitled cause :

First. Because the transcript of the record filed in
s court is so defective that this court cannot dispose of
d appeal upon the merits.

Second. Because the decree from which the said ap-
al purports to have been taken is a decree of the Cir-
it Court of Appeals for the Fifth Circuit, and the
nscript of the record filed in this court fails to show
jurisdiction in this court of the appeal from said de-
e, and it appears from said transcript of record that

the above-entitled cause is a suit begun in the Circuit Court for the Northern District of Georgia, from which court said cause was taken by appeal to said Circuit Court of Appeals, and that the original jurisdiction of said Circuit Court must have been founded wholly on diversity of citizenship, and that the decree of said Circuit Court of Appeals therein was final.

By their attorneys,

LOUIS D. BRANDEIS.
WILLIAM H. DUNBAR.

SUPREME COURT OF THE UNITED STATES.

No. 44.

THE HUGULEY MANUFACTURING CO. ET AL.

v.

THE GALETON COTTON MILLS ET AL.

BRIEF FOR APPELLEES ON MOTION TO DISMISS.

LOUIS D. BRANDEIS,
WILLIAM H. DUNBAR,
Counsel for Appellees.

Supreme Court of the United States.

THE HUGULEY MANUFACTURING CO. ET AL.

v.

THE GALETON COTTON MILLS ET AL.

BRIEF FOR APPELLEES ON MOTION TO DISMISS.

STATEMENT OF FACTS.

The transcript of the record in the present case is so defective as to make it impossible to present a statement of facts drawn exclusively from the record of the case. The following statement, based upon such material as the transcript affords, is derived largely from the opinion rendered in the Circuit Court of Appeals. (Record, p. 105.)

The Alabama and Georgia Manufacturing Company, a corporation organized under the laws of Georgia (Record, p. 14, statement in petition) on January 1, 1884, executed a mortgage deed of trust to J. J. Robinson and two others to secure $65,000 of bonds. The Huguley Manufacturing Company, also a corporation organized under the laws of Georgia (Record, p. 14) became by purchase the owner of the equity of redemption in this property. (Record, p. 105.) On January 25, 1891, the trustee Robinson filed his bill of complaint against the Alabama and Georgia Manufacturing Company, The Huguley Manufacturing Com-

pany, and William T. Huguley, one of his co-trustees whose interest was adverse to the bondholders, to foreclose the deed of trust. The third trustee was dead. (Record, pp. 55 and 105.)

On this bill a decree of foreclosure was entered and the property sold to persons representing the bondholders. These purchasers organized the Galeton Cotton Mills corporation, one of the appellees. This corporation entered into possession of the property. On appeal to the Circuit Court of Appeals for the Fifth Circuit the decree under which the sale was had was reversed, and a petition of the Huguley Manufacturing Co. for restitution of the property was granted by the Circuit Court on condition that it pay into court $10,000 which had been paid by the purchasers at the sale. This condition was not complied with. The Circuit Court then ordered a new sale of the property. (Record, pp. 55 *et seq.* and 105.) From the decrees ordering a new sale and granting restitution only on condition of the payment of $10,000 the defendants appealed to the Circuit Court of Appeals, which affirmed the action of the Circuit Court. (Record, p. 6.)

Thereupon the property was sold and purchased by one L. Lanier in behalf of the bondholders. (Record, p. 19.) This sale was confirmed on June 25, 1896. (Record, p. 24.)

The defendants having filed a petition for an account of rents and profits from the time of the first sale (this petition is not printed in the transcript) and an amendment thereto (Record, p. 14) a reference was made to a special master who on November 2, 1897, filed his report (Record, p. 25), in which he found the Galeton Cotton Mills liable for rents and profits amounting to $39,713.51. Both parties

filed exceptions to the master's report. Those of the present appellants (Record, p. 40) were directed chiefly to findings of fact. On February 23, 1898, the exceptions of the appellants were overruled, and the exceptions of the appellees were sustained to the extent of reducing the master's finding to $35,857.54 (Record, p. 46), and a decree was accordingly entered on February 28, 1898. (Record, p. 53.)

On April 11, 1898, upon a motion of the appellees (not included in the transcript of the record) the Circuit Court entered a decree directing that the rents and profits should be applied in reduction of the mortgage debt. (Record, p. 55.)

On June 4, 1898, the Circuit Court entered a decree fixing the amount of the mortgage debt and the costs, and directing the manner of applying thereto the rents and profits, and the amount of cash already received, and reserving all questions of costs and expenses not therein disposed of. (Record, p. 64.)

On September 22, 1898, the purchaser at the second sale petitioned for a final conveyance to him (Record, p. 67), and on October 15, 1898, after a hearing, a decree was entered directing the completion of the sale by cash payment and a conveyance. (Record, p. 72.) A motion was made to set aside this decree (Record, p. 75), but was overruled on November 12, 1898 (Record, p. 77), and thereupon an appeal was taken to the Circuit Court of Appeals. (Record, p. 78.)

On this appeal fifty-six errors were assigned. (Record, p. 79.) The appeal was heard and the decree of the Circuit Court was, on May 16, 1899, affirmed (Record, p. 98), a petition for a rehearing (Record, p. 99) was filed,

and on June 1, 1899, denied (Record, p. 102), and on May 12, 1900, a petition for an appeal to this court was presented to Judge Pardee, and by him allowed, in order to preserve any possible rights of the petitioners, although he expressly stated that he seriously doubted the right of appeal. (Record, p. 103.)

The appellants are the original defendants in the bill to foreclose, and the appellees named in the appeal bond (Record, p. 95) appear to be the original plaintiff (the trustee under the mortgage) and the Galeton Cotton Mills, the purchaser at the first sale; L. Lanier, who purchased at the second sale, is not named in the bond, although he is named as an appellee in the citation (Record, p. 109.)

The appellees now move to dismiss the appeal:

1. Because the transcript of the record is so defective that the Court cannot dispose of the case on the merits.

2. For want of jurisdiction of the appeal.

Argument.

I.

The appeal should be dismissed because the transcript of the record is so defective that the Court cannot dispose of the case on the merits.

1. The record is substantially defective.

It appears incidentally from the transcript of the record that this case is a proceeding in equity begun in 1891 by one of the appellees, J. J. Robinson, against the appellants for the foreclosure of a mortgage deed of trust; that the

property was sold by decree of court and purchased by the other appellee, the Galeton Cotton Mills ; that after appeal to the Circuit Court of Appeals the decree for a sale was set aside, and that thereafter a second sale was ordered, the decree for which was affirmed on appeal ; that at some time the Galeton Cotton Mills became a party to the suit ; that at some time a petition was filed by the appellants for an account of rents and profits during the period of possession under the first sale ; and that the final disposition of that petition is the real subject of the present appeal.

The transcript of the record filed in this court does not contain :

(1) the bill of complaint, answer, or any pleadings between the original parties ;

(2) the decree under which the property was originally sold ;

(3) the report of and confirmation of this sale in pursuance of which the property was held by the purchasers during the period for which an accounting is asked ;

(4) the decree of the Circuit Court of Appeals reversing this decree for sale;

(5) the decree for a second sale from which the second appeal to the Circuit Court of Appeals was taken;

(6) the appearance and admission of the Galeton Cotton Mills, one of the appellees, as a party to the suit;

(7) the original petition for an account of rents and profits;

(8) any paper filed prior to receipt of the mandate from the Circuit Court of Appeals on the second appeal.

Although the litigation began in January, 1891, no papers filed and no proceedings had prior to the mandate

received from the Circuit Court of Appeals on the second appeal on March 10, 1896, are included in the transcript. No agreement as to the making up or printing of the transcript in this court appears. There was such an agreement as to the printing of the transcript of record on the third appeal to the Circuit Court of Appeals (Record, p. 1), and a further agreement (Record, p. 5), that the record should not include any part transmitted on the two former appeals, but that either party might refer to such former printed records. These agreements cannot affect the transcript to be transmitted to this court. The fact that parts of the record were already on the files of the Circuit Court of Appeals and had previously been printed might warrant omitting them from the record made up for the third appeal, and no practical inconvenience would result, as the court would be provided with and could consider the omitted parts. In this court, however, there is nothing to supply the omission, and the case can be heard and determined only on the matter which appears in the transcript. These defects do not result from any agreement between the parties as to the transcript of record for this court, for no such agreement has at any time been made.

The rules of this court expressly provide that the record must be complete, containing in itself and not by reference all papers and proceedings necessary to the hearing in this court. Rule 8, clause 3.

2. The defects are such that this court cannot dispose of the case on the merits.

(*a*) This court will of its own motion dismiss a case

in which the record fails to show jurisdiction in the court below.

Mansfield, C. & L. M. R'y Co. v. *Swan*, 111 U.S. 379.

The lack of jurisdiction cannot be cured by consent of the parties or failure of the court below to take objection to the jurisdiction. It is necessary, therefore, to enable this court properly to hear and dispose of a case brought to it by appeal, that the record should include whatever papers are relied upon to show the jurisdiction of the court below.

The printed transcript in the present case contains no paper showing any jurisdiction. The original bill of complaint which, it may be conjectured, contained allegations showing a diversity of citizenship or some other ground of jurisdiction in the Circuit Court is not included in the transcript. It does not appear, therefore, from the record now before this court that there was any jurisdiction in the Circuit Court. If the necessity of showing such jurisdiction can be obviated by omitting the bill of complaint from the transcript, then by agreement so to do the parties can deprive this court of the power to determine the existence of jurisdiction.

(*b*) This court has always treated as incomplete a record in which the pleadings were not included, and has refused to hear a case on such a record.

In *Redfield* v. *Parks*, 130 U.S. 623, the transcript contained a bill of exceptions which so far as appears set forth all the material facts; but this court refused to hear the case, the pleadings being omitted, saying: "The complaint and answers are necessary to the hearing in this

court, and unless a record containing them is filed here the case cannot be heard." P. 625.

The same rule had previously been laid down where the transcript contained the agreed statement of facts on which the case had been heard in the court below and the judgment of that court, but omitted the pleadings.

Keene v. *Whittaker*, 13 Peters, 459.
Curtis v. *Petitpain*, 18 How. 109.

In the present case the necessity of having the pleadings is greatly intensified. The only means of ascertaining from the transcript the nature of the controversy is examining the opinions of the courts below, which contain succinct statements of the nature of the cause and the course of proceedings. Even the original petition by the appellants, the foundation of their whole claim as to rents and profits, has been omitted. There is absolutely nothing to take the place of the pleadings even if a more or less inadequate substitute could be allowed.

The rules of this court do not prescribe and it would perhaps be impossible to prescribe by rule what a record on appeal must include, but rule 52 in admiralty "may serve as an appropriate guide in cases at law or in equity" (*Railway Co.* v. *Stewart*, 95 U.S. 279, 285), and it is there provided that the transcript of record shall include the pleadings.

3. The case should be dismissed.

"It is clearly the duty of the party who takes an appeal to see to it that the record is properly presented here." *Railway Co.* v. *Stewart*, 95 U.S. 279, 284.

It is certainly not the duty of the appellees to go to expense in applying for a *certiorari* in order to have the record complete enough for the case to be heard. In case of such deficiency in the record the court can dismiss the appeal.

Redfield v. *Parks*, 130 U.S. 623.

This course was not adopted in the case just cited because the court deemed that the circumstances were such as to make a less vigorous course proper. In the present case there has been no such delay as was there deemed material. The transcript of record was filed in this court on June 25, 1900. It was not printed for about a year, and this motion is made at the first opportunity after the transcript was printed. This court has taken judicial notice of the fact that counsel rarely see the transcript until it is printed.

Bein v. *Heath*, 142 U.S. 704.

II.

The appeal should be dismissed for want of jurisdiction.

1. The record fails to show jurisdiction of the appeal.

It is the settled law of this court that jurisdiction must be made affirmatively to appear, and if the record fails to show jurisdiction the appeal will be dismissed.

Hunt v. *Blackburn*, 127 U.S. 774.
Ansbro v. *United States*, 159 U.S. 695.

The printed transcript in the present case fails to show any ground of jurisdiction in the court below. Assuming

that the Circuit Court had jurisdiction on some ground, it does not appear on what ground, and therefore it does not appear whether an appeal from the Circuit Court lay direct to this court or to the Circuit Court of Appeals. Assuming that an appeal lay to the Circuit Court of Appeals, it does not appear whether or not the case is one in which by statute the decree of that court would be final, and therefore it does not appear whether this appeal lies to this court.

2. The decision of the Circuit Court of Appeals was final.

(*a*) The jurisdiction of the Circuit Court must have been dependent entirely on diversity of citizenship.

The ground of original jurisdiction in the Circuit Court for the purpose of determining the finality of a decision by the Circuit Court of Appeals depends upon the ground of jurisdiction shown by the plaintiff when he first brings his suit.

> *Colorado Central Mining Co.* v. *Turck*, 150 U.S. 138.
>
> *Press Publishing Co.* v. *Monroe*, 164 U.S. 105.
>
> *Ex Parte Jones*, 164 U.S. 691.
>
> *American Sugar Refining Co.* v. *New Orleans*, 181 U.S. 277.

The original bill of complaint is not in the transcript of the record, so that it is impossible to refer to it to determine the ground of invoking the jurisdiction of the Circuit Court, but the other parts of the record make the conclusion practically certain.

The Circuit Court, under the Act of August 13, 1888, c. 866 (25 St. 433), has original jurisdiction of civil cases: (1) arising under the constitution, laws, and treaties of the United States; (2) in which the United States are plaintiffs; (3) between citizens of different States; (4) between citizens of the same State claiming lands under grants from different States; (5) between citizens of a State and foreign states, citizens, and subjects.

It sufficiently appears from the record that the United States was not a party plaintiff; that no lands were claimed under grants from different States; and that no foreign state, citizen, or subject was a party. Jurisdiction must have been founded either on diversity of citizenship or some claim made under the constitution, laws, or treaties of the United States.

The record contains (Record, p. 79) a very elaborate assignment of errors filed by the present appellants in the Circuit Court of Appeals, which may fairly be deemed to include all issues in the case. The following analysis of these alleged errors shows that none of them is founded upon any question arising under the constitution, laws, or treaties of the United States that can have been raised by the original bill of complaint. All of the alleged errors were in the action of the court in respect to matters arising subsequent to the bringing of the suit.

Errors numbered 1 and 2 were directed to the confirmation of the second sale before the special master, to whom the accounting for rents and profits was referred, had reported.

Errors numbered 3, 4, and 5 were directed to the confirmation of the special master's report, on the ground that he had not properly performed his duties.

Errors 6 numbered to 12, both inclusive, 14 and 36, were directed to the rule or measure of liability for rents and profits adopted by the special master and by the court.

Errors numbered 13, 15, 16, and 17 were directed to rulings on evidence before the special master.

Errors numbered 18 to 30, both inclusive, 39 and 40 were directed to the rule adopted by the special master and by the court as to the application of the rents and profits.

Errors numbered 31, 32, and 33 were directed to the method of estimating the deficiency after application of rents and profits.

Errors numbered 34 and 35 related to a petition of one of the appellants concerning its claim to certain personal property converted after the first sale.

Errors numbered 37 and 38 were directed to the action of the court in modifying its decision in reference to the rents and profits, and allowing payment of counsel fees.

Errors numbered 41 to 47, both inclusive, were directed to the action of the court in deducting the cash paid by the purchaser at the first sale from the sum to be paid to complete the second sale.

Error numbered 48 was directed to the action of the court in fixing the amount to be paid to complete the sale.

Error numbered 49 was directed to the decision of the court denying the appellant Huguley Manufacturing Co. a lien on property for anything it might recover in this suit.

Errors numbered 50 to 55, both inclusive, were directed to the action of the court in allowing the second sale to be completed after a delay of two and a half years.

Error numbered 56 was founded on the allegation that the action of the Circuit Court was not in conformity with the mandate from the Circuit Court of Appeals on a prior appeal.

It is obvious that none of these assignments of error concern any issue which would indicate that the plaintiff's case as originally presented by him arose under the constitution, laws, or treaties of the United States. While it cannot be said that this precludes the possibility of such an original ground of jurisdiction appearing, it affords a fair foundation for such an inference.

(*b*) If jurisdiction was dependent wholly on diversity of citizenship the decision of the Circuit Court of Appeals was final.

The Act of March 3, 1891, c. 517 (26 St. 826), provides in section 6 that the Circuit Court of Appeals shall have appellate jurisdiction to review judgments and decrees of the Circuit Courts in all cases in which a direct appeal is not by section 5 given to this court, and that the judgments and decrees of the Circuit Court of Appeals shall be final in all cases in which the jurisdiction is dependent entirely on diversity of citizenship.

In any case, therefore, in which original jurisdiction is taken by the Circuit Court on the ground wholly of diversity of citizenship — by which is meant, as above set forth, that no other ground of jurisdiction is shown by the plaintiff's original presentation of his case in the Circuit Court — the decision of the Circuit Court of Appeals, if an appeal to that court is taken, is final. If in the course of the proceedings any question arises which brings the case within the category of section 5 of the Act, providing for a direct appeal to this court, the party aggrieved by the

final judgment or decree of the Circuit Court may appeal direct to this court (*Loeb* v. *Columbia Township Trustees*, 179 U.S. 472,) but he may also none the less as an alternative appeal to the Circuit Court of Appeals, and if he does so that court has jurisdiction to dispose of the appeal ;

American Sugar Refining Co. v. *New Orleans*, 181 U.S. 277;

and its decision thereon is final, except as to questions certified by it and on *certiorari* from this court.

Colorado Central Mining Co. v. *Turck*, 150 U.S. 138.

Press Publishing Co. v. *Monroe*, 164 U.S. 105.

Ex Parte Jones, 164 U.S. 691.

American Sugar Refining Co. v. *New Orleans*, 181 U.S. 277.

This is in accordance with the general intention of the Act, to distribute the appellate jurisdiction and to permit an appeal to only one court in any case.

Robinson v. *Caldwell*, 165 U.S. 359.

(*c*) The appellants have failed to show any ground for an appeal to this court.

The only cases in which an aggrieved party can appeal to the Circuit Court of Appeals, and from that court to this court, are cases in which there is some ground of appellate jurisdiction other than the grounds which are enumerated in section 5 of the Act of March 3, 1891, and some ground of original jurisdiction in the Circuit Court other than diversity of citizenship. The appellants have failed by the record which they have brought to this court

to show any ground of jurisdiction in the Circuit Court or of appeal to this court. In the assignments of error already referred to (Record, p. 79) there is nothing that can by any possibility be supposed to show the existence of a federal question in the controversy. The alleged errors numbered 28 and 29 do indeed speak of the impairment of rules of property and the impairment of the obligation of a contract, but only with reference to the action of the Circuit Court. They raise no question which would either give original jurisdiction to the Circuit Court or direct appellate jurisdiction to this court.

To avail of any question as a ground of appeal it must be made to appear that it actually was a substantial matter of controversy. If the appellant desired, after his unsuccessful appeal to the Circuit Court of Appeals, to take an appeal to this court on the ground that the case was one in which jurisdiction did not depend entirely on diversity of citizenship, it was his duty to make the existence of the ground of his appeal apparent, and if the record fails to show that there was such a ground of appeal the decision of the Circuit Court of Appeals is final, and the appeal should be dismissed.

Borgmeyer v. *Idler*, 159 U.S. 408.
Muse v. *Arlington Hotel Co.*, 168 U.S. 430.

LOUIS D. BRANDEIS,
WILLIAM H. DUNBAR,
Counsel for Appellees.

No. 94.

Br. of Brandeis for Appellees.

Supreme Court U.S.
FILED
NOV 9 1901
JAMES H. McKENNEY

Filed Nov. 9, 1901.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 94.

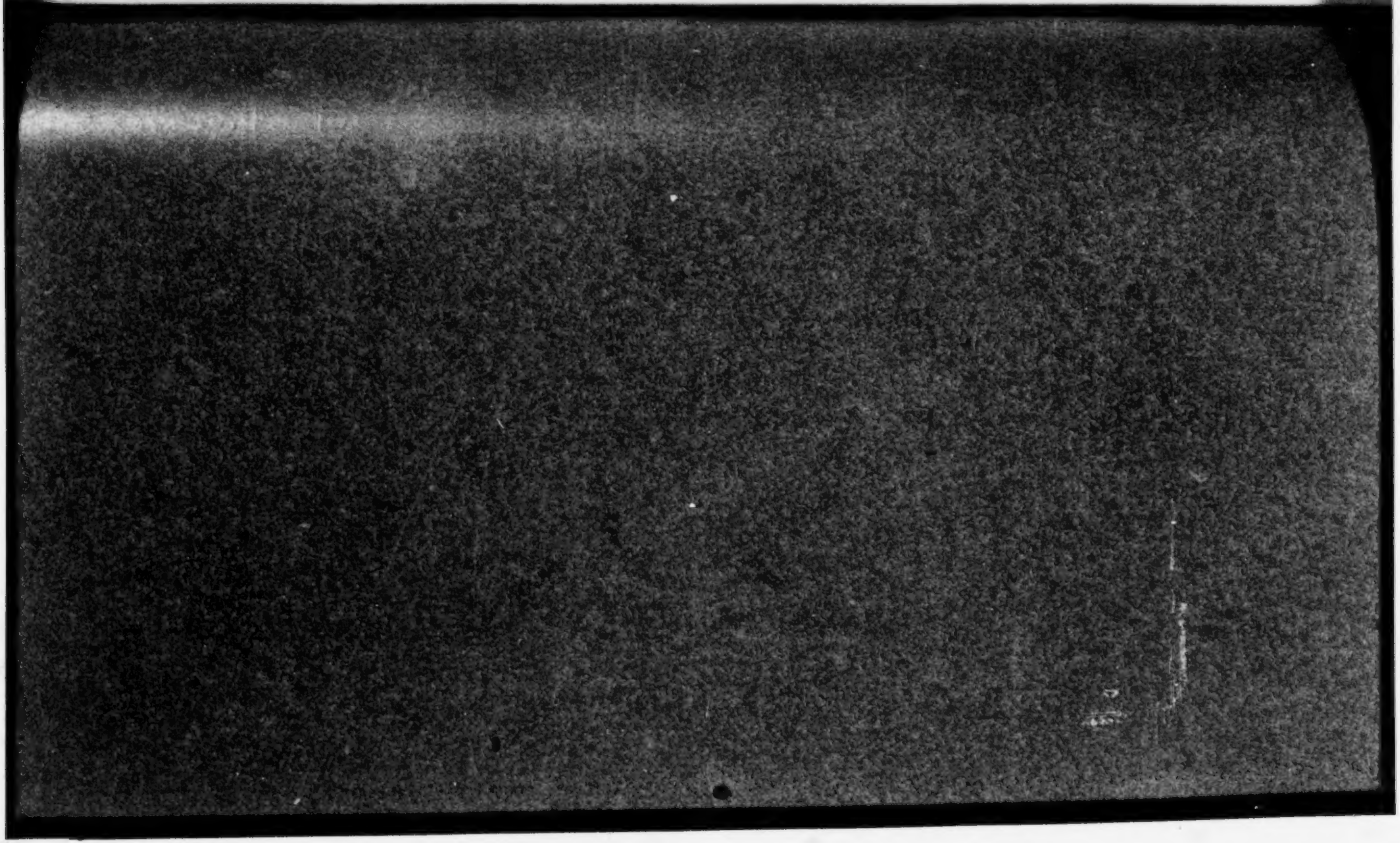
THE HUGULEY MANUFACTURING CO. ET AL.

v.

THE GALETON COTTON MILLS ET AL.

BRIEF IN BEHALF OF APPELLEES IN REPLY TO APPELLANTS' BRIEF IN SUPPORT OF MOTION FOR CERTIORARI.

LOUIS D. BRANDEIS,
WILLIAM H. DUNBAR,
Counsel for Appellees.



Supreme Court of the United States.

THE HUGULEY MANUFACTURING CO. ET AL.

v.

THE GALETON COTTON MILLS ET AL.

BRIEF IN BEHALF OF APPELLEES IN REPLY TO APPELLANTS' BRIEF IN SUPPORT OF MOTION FOR CERTIORARI.

STATEMENT OF FACTS.

This case is a bill in equity filed in the Circuit Court of the United States for the Northern District of Georgia on January 21, 1891. Appeals were taken by the defendants at successive stages to the Circuit Court of Appeals. (See 56 F.R. 690; 72 Fed. R. 708; 94 Fed. R. 269.) The last of these appeals was decided adversely to the appellants on May 16, 1899, and a motion for a rehearing was, on June 1, 1899, denied (Record, p. 102). The appellants thereupon filed a petition in this court for certiorari; this petition was denied October 30, 1899. (See 175 U.S. 726.) On May 12, 1900, the appellants filed a petition for this appeal, and it was allowed by Judge Pardee with serious doubts (Record, p. 103).

The transcript of the record was filed in this court on June 25, 1900, and the printed copies about a year later.

On September 28, 1901, the appellants filed the motion now before the court for a *certiorari* to complete the record. On October 7, 1901, before notice of the motion for *certiorari*, the appellees filed a motion to dismiss the appeal for want of jurisdiction, and a brief in support thereof. Both motions are now before the court.

The transcript of the record in the present case is so defective as to make it impossible to present a statement of facts drawn exclusively from the record of the case. The following statement, based upon such material as the transcript affords, is derived largely from the last opinion rendered in the Circuit Court of Appeals (Record, p. 105).

The Alabama and Georgia Manufacturing Company, a corporation organized under the laws of Georgia (Record, p. 14, statement in petition) on January 1, 1884, executed a mortgage deed of trust to J. J. Robinson and two others to secure $65,000 of bonds. The Huguley Manufacturing Company, also a corporation organized under the laws of Georgia (Record, p. 14), became by purchase the owner of the equity of redemption in this property (Record, p. 105).

The interest due July 1, 1890, on these bonds was not paid, and on the first day of January, 1891, still remained unpaid on $45,000 of the bonds. According to the terms of the mortgage, the default in the payment of this interest, if continued for a period longer than six months, entitled the bondholders to demand payment of the principal, and this privilege was exercised by the holders of the $45,000 of bonds so in default. For this default, the trustee Robinson, on January 21, 1891, filed his bill of complaint against the Alabama and Georgia Manufacturing Company, the Huguley Manufacturing Company, and

William T. Huguley, one of his co-trustees whose interest was adverse to the bondholders, to foreclose the deed of trust. The third trustee was dead. (Record, pp. 55 and 105.)

On this bill a decree of foreclosure was entered and the property sold in September, 1892, to persons representing the bondholders. These purchasers organized the Galeton Cotton Mills corporation, one of the appellees. This corporation entered into possession of the property. On appeal to the Circuit Court of Appeals for the Fifth Circuit the decree under which the sale was had was reversed, and a petition of the Huguley Manufacturing Company for restitution of the property was granted by the Circuit Court on condition that it pay into court $10,000 which had been paid by the purchasers at the sale. This condition was not complied with. The Circuit Court then ordered a new sale of the property. (Record, pp. 55 *et seq.* and 105.) From the decrees ordering a new sale and granting restitution only on condition of the payment of $10,000 the defendants appealed to the Circuit Court of Appeals, which on March 10, 1896, affirmed the action of the Circuit Court. (Record, p. 6.)

The defendants, after the reversal of the first decree for a sale, filed a petition (not included in the transcript of the record) asking that the purchaser who had been in possession under that decree since the time of the first sale be required to account for the rents and profits. On March 10, 1896, an amendment to this petition was filed (Record, p. 14) and on March 16, 1896, the petition was referred to a special master to take the accounts. On May 1, 1896, the defendants filed a petition (Record, p. 16) asking that the sale ordered in the decree of March

30, 1895, be postponed until the accounting for rents and profits was completed. This petition was denied on May 2, 1896 (Record, p. 19). Thereupon the property was sold at auction on May 5, 1896, and purchased by one L. Lanier "representing a majority of the bondholders." (Record, p. 19). This sale was confirmed on June 25, 1896 (Record, p. 24).

On November 2, 1897, the special master to whom the petition for an accounting of rents and profits had been referred filed his report (Record, p. 25) in which he found the Galeton Cotton Mills liable for rents and profits amounting to $39,713.51, including a sum of $2,500 and $891.04 interest thereon for property, not covered by the mortgage, which had been converted by the Galeton Cotton Mills. Both parties filed exceptions to the master's report. Those of the present appellants (Record, p. 40) were directed chiefly to findings of fact. On February 23, 1898, the exceptions of the appellants were overruled, and the exceptions of the appellees were sustained to the extent of reducing the master's finding to $35,857.54, by allowing to the Galeton Cotton Mills a sum of $3,502.52 paid for insurance on the property and $353.45 interest thereon (Record, p. 46), and a decree was accordingly entered on February 28, 1898 (Record, p. 53).

On April 11, 1898, upon a motion of the appellees (not included in the transcript of the record) the Circuit Court entered a decree directing that the rents and profits should be applied in reduction of the mortgage debt (Record, p. 55).

On April 16, 1898, the appellants moved that the rents and profits found due from the Galeton Cotton Mills should be applied to the reduction of the mortgage in-

debtedness at a date intermediate between the two sales. On April 26 a decree was entered denying this motion (Record, p. 63).

On June 4, 1898, the Circuit Court entered a decree fixing the amount of the mortgage debt and the costs, and directing the manner of applying thereto the rents and profits, and the amount of cash already received, and reserving all questions of costs and expenses not therein disposed of (Record, p. 64).

On September 22, 1898, the purchaser at the second sale, Mr. L. Lanier, filed a petition asking that a deed be made to him and that the conveyance be made free from any lien, and especially from any lien for the sum of $2,500 and interest thereon awarded to the Huguley Manufacturing Company in the report of the special master (Record, p. 67).

On October 15, 1898, the Court entered a decree upon this petition directing payment in cash into court of the balanec of the purchase price remaining after allowing the petitioner for the $5,000 deposited by him at the time of the sale, and for $10,000 with interest thereon for the amount paid by him at the first sale of the property. This balance amounted to $48,433.36 with interest at seven per cent. from the time of the second sale. The Court further ordered that all claims of the Huguley Manufacturing Company upon the mortgaged property should be transferred to the net proceeds of the sale (Record, p. 72).

A motion to set aside the decree of October 15, 1898, was made (Record, p. 75) and overruled on November 12, 1898 (Record, p. 77). Thereupon the appellants filed a petition for an appeal to the Circuit Court of Appeals, and this petition was duly allowed on Dec. 2, 1898 (Record,

p. 78). On this appeal the appellants assigned fifty-six errors (Record, p. 79) directed chiefly to the findings of fact of the special master, questions of evidence arising at the hearings before him, and other questions of law in relation to the accounting for rents and profits.

In the Circuit Court of Appeals, on May 16, 1899, the decree of the Circuit Court was affirmed (Record, p. 98). The appellants at once filed a motion for a rehearing, which on June 1, 1899, was denied (Record, p. 102). The appellants thereupon petitioned this court for a writ of *certiorari* to review the decision of the Circuit Court of Appeals. On October 30, 1899, this petition was denied. On May 12, 1900, the appellants presented a petition for appeal to Judge Pardee, which was allowed by him in order to save any rights they might have, but with serious doubts as to the right to an appeal.

In support of their motion for a *certiorari*, the appellants have filed a brief in which they contend :

(1) That the case is within the appellate jurisdiction of this court, or, if not, that this court has authority to and will review the record upon the appellants' suggestions of serious errors appearing therein, and that the appellees' motion to dismiss for want of jurisdiction should not be granted.

(2) That the record shows grave errors committed by the courts below in the course of the proceedings, as well as want of original jurisdiction in the Circuit Court and lack of jurisdiction to grant the relief sought and embodied in the decrees appealed from.

(3) That there is sufficient reason for now granting a *certiorari* to correct the defects in the transcript of the record filed in this court.

The appellees submit that none of these positions are well founded.

ARGUMENT.

I.

The appeal should be dismissed for want of jurisdiction.

1. This court cannot now review the proceedings of the court below unless an appeal lay.

The appellants contend that this court has a general power to supervise all proceedings of inferior courts, and for this purpose to examine and correct errors in the records from such inferior courts, whenever and however such records are brought before it, and such errors called to its attention, and the appellants appear to suggest that any act of Congress limiting the cases in which the decisions of inferior courts may be reviewed by this court upon appeal are infractions of the powers conferred upon this court by the Constitution.

The appellate jurisdiction of this court is defined by statute. Congress has full power to fix the limits of such jurisdiction and to determine the cases in which the decisions of inferior courts shall not be reviewed on error or appeal by this court. Statutes thus defining and limiting the appellate jurisdiction have existed since the foundation of the court and are constitutional.

Am. Cons. Co. v. *Jacksonville T. & K. W. Ry. Co.*, 148 U.S. 372, 378.

"From *Wiscart* v. *D'Auchy*, 3 Dall. 321, to *American*

Construction Co., Jacksonville, etc., Railway Co., 148 U.S. 372, it has been held in an interrupted series of decisions that this court exercises appellate jurisdiction only in accordance with the acts of Congress upon that subject."

Colorado Central Mining Co. v. *Turck*, 150, U.S. 138, 141.

No attempt has been made by Congress, however, in the act creating the Circuit Court of Appeals, to deprive this court of the power to review any case that it sees fit. Under that statute it is expressly provided in cases in which the right to a writ of error or an appeal to this court is not given that this court may review by *certiorari* the proceedings of the courts below, independently of any certificate from the court below.

Act of March 3, 1891, Chap. 517, Sect. 6. 26 Stat. 826.

In the present case, assuming, as the appellees contend, that an appeal did not lie, this court still had power to review the proceedings if it deemed the case one in which such a review was necessary or desirable. A petition for *certiorari* to secure such a review was in fact filed, but was denied by this court October 30, 1899.

Huguley Manufacturing Co. v. *Galeton Cotton Mills*, 175 U.S. 726.

No such application is now before the court. The appellants' motion filed on September 28, 1901, is a petition for a *certiorari* to complete the record, founded on the suggestion of a diminution of the record. If this petition could in any sense be deemed a proceeding to secure a

review by this court on *certiorari*, even if the denial of the former application were not conclusive, the present application would be too late. By analogy to the limitation of time for claiming an appeal such an application must be made within one year from the final decree which it is sought to review.

The Conqueror, 166 U.S. 110, 114.

Aside from the provisions for review by certiorari contained in the statute creating the Court of Appeals, this court will not grant a writ of *certiorari* for the purpose of bringing up for review the proceedings of an inferior court.

Am. Const. Co. v. *Jacksonville T. & K. W. Ry.*, 148 U.S. 372, 380.

The appellants' contention is in its essence that there exists in this court a roving power to review matters not within its ordinary appellate jurisdiction, which this court will exercise on any suggestion of error committed by an inferior court. But such power, so far as any in fact exists, arises only under the provisions of law authorizing this court and other courts of the United States to issue such writs and processes as may be required. (Rev. Stat., Sect. 716.) This power will certainly not be exercised in cases otherwise provided for, and *a fortiori* not where an application has already been made to this court for an extraordinary remedy and has failed. The power is intended to meet emergencies not otherwise provided for, such as proceedings for contempt, in which there is no right to a writ of error or an appeal. The

power is an exercise of the original jurisdiction of the court upon a petition duly filed by leave of court upon which an order to show cause is issued and served.

See *In re Chetwood*, 165 U.S. 443, 444.

If under any circumstances the appellants in the present case could invoke the exercise of such a power by the court, they have not in fact done so. No original petition for the issue of such a writ has been filed, no order of notice has been issued, and by no process of this court have the appellees been brought before it. The petition or motion actually filed is founded on the theory that there is before this court an appeal properly taken and within the court's appellate jurisdiction. This petition cannot be converted into an application to the court for relief under its original jurisdiction.

Unless, therefore, the court is satisfied that the present case is within its appellate jurisdiction, as defined by Statute of March 3, 1891, the appeal must be dismissed.

2. The case is not within the appellate jurisdiction of this court.

The act of March 3, 1891, Chap. 517, creating the Circuit Court of Appeals, provides that decrees of the Circuit Court of Appeals shall be final in all cases in which the original jurisdiction of the Circuit Court was dependent wholly on diversity of citizenship, except such cases as may be brought up upon certificate from the Circuit Court of Appeals or upon a writ of *certiorari* issued by this court. The appellants have sought in various ways to avoid the effect of this provision. They

appear to contend (Appellants' brief, p. 52) that such a limitation on the appellate jurisdiction of this court is unconstitutional, forgetting the provision giving this court full authority to bring any case before it by *certiorari*, and to impugn the validity of the statute on the ground that it is an infringement of the prerogatives of this court. We agree entirely with the appellants' assertion that no case can be put in which the jurisdiction of this court is dependent upon the will of the court below, but it is not a necessary consequence that the appellate jurisdiction of this court is to be exercised independently of any fixed rules, and certainly where the court is given an unrestricted power to bring up cases for review there is no ground for criticising the action of the Legislature.

Again, the appellants seem to contend (Brief, p. 53) that because, as they allege, the decree appealed from was not a final decree, therefore the decision of the Circuit Court of Appeals is not final, and an appeal lies to this court. There appears here to be an obvious confusion of thought. Whether or not the decree was a final decree in the sense of terminating the cause is for the present purposes immaterial. Appeals can be taken only from final decrees of the Circuit Court of Appeals. The decree appealed from cannot be final so as to be the subject of appeal, and yet not final in the sense that the decision of the Circuit Court of Appeals is not subject to review if the case is within the provisions of the Act above referred to. The appellants' contention amounts, in fact, to saying that an appeal can be taken to this court from the Circuit Court of Appeals on an interlocutory decree, although a final decree in the Circuit Court of Appeals in the same case could not be so reviewed.

But the appellants concede at a later point in their argument (Appellants' brief, p. 77) that in the present case no appeal lies to this court, and the decision of the court below was conclusive, if the original jurisdiction of the Circuit Court was dependent exclusively on diversity of citizenship, and this is the undoubted result of the authorities cited by the appellants, and by us in our brief filed in support of the appellees' motion to dismiss.

The appellants contend, however, that the jurisdiction of the Circuit Court was not dependent in the present case exclusively on diversity of citizenship :

(*a*) Because the question of the existence of jurisdiction in equity was necessarily involved. (Appellants' brief, pp. 51 and 52.)

(*b*) Because the land to be sold was outside the jurisdiction of the court. (Appellants' brief, pp. 77 *et seq.*)

(*c*) Because the Circuit Court had no jurisdiction of the cause.

It is certainly not true that a different rule prevails at law and in equity for testing the existence of original jurisdiction in the Circuit Court. In determining such jurisdiction the sole question is whether the court has jurisdiction as a federal court. A federal court never has jurisdiction merely on the ground that the plaintiff is entitled to relief in equity. Hence jurisdiction in the federal courts can never be dependent, in the only sense now material, on the existence of equity jurisdiction. The jurisdiction of those courts is determined by whether the case contains one of the grounds fixed by the Constitution and laws of the United States for the jurisdiction of its courts. The distinction has been clearly pointed out

in this court between jurisdiction in the Circuit Court as a federal court and jurisdiction in the Circuit Court as a court of equity, — with the corollary that the former only is material in determining the right of appeal and similar questions.

Blythe v. *Hinckley*, 173 U.S. 501.
Huntington v. *Laidley*, 176 U.S. 668.

It is equally clear that the original jurisdiction of the Circuit Court, in the only sense material in applying the provisions of the statute, was not dependent on whether the relief asked was such as the court could grant. The Circuit Court of the United States as a federal court can neither acquire nor be deprived of jurisdiction of a cause by the fact that the plaintiff therein is or is not entitled to the relief which he has asked, or that such relief is of a kind that the court can or can not grant. The appellants concede that the ground of jurisdiction must appear on the face of the record at the time the suit is instituted (Appellants' brief, p. 77). They have not suggested the existence of any foundation for jurisdiction other than diversity of citizenship. The prayer of the plaintiff that the court decree a sale of land situated in Alabama is no more claiming a right under the laws of the United States than to ask the court to decree a sale of land in Georgia. Whether or not the court could decree such a sale no more involved a question arising under the laws of the United States than whether or not it could decree a sale of land in Georgia. The power of the court to grant the relief asked is involved in every case; but that is not a matter which can give original jurisdiction to the Circuit Court. If the defendant denies the power of the

court a case may arise under the laws of the United States so as to warrant a direct appeal to this court, but that does not make it a basis of original jurisdiction.

The grounds, and the only grounds, of original jurisdiction in the Circuit Court are set forth in the Act of Aug. 13, 1888, Chap. 866 (25 Stat. 433). Nowhere in that Act is it made a ground of jurisdiction that the relief sought, if granted, will affect property outside the jurisdiction of the court, or that a question may arise as to the judicial power of the court to grant the relief sought. Unless upon the face of the original bill one of the other grounds of jurisdiction enumerated in the statute appeared as a part of the plaintiff's case, there could have been no jurisdiction except for diversity of citizenship.

The appellants' contention that a question of the jurisdiction in the Circuit Court arises which will support the appeal to this court appears to be wholly without foundation. It is immaterial, for the present purpose, whether jurisdiction existed in the Circuit Court or not. The only question now before this court is whether the case brought before it is one of which it can take cognizance under the the statute defining its appellate jurisdiction. The act expressly provides that the question of the existence or not of original jurisdiction in the Circuit Court may be taken direct from the Circuit Court to this court by an appeal upon that question alone. The appellants did not follow that course, preferring to take their case to the Circuit Court of Appeals. They cannot now appeal to this court on the ground of jurisdiction.

McLish v. *Roff*, 141 U.S. 661.

Unless the present appeal is properly before this court,

it must be dismissed without considering the merits of the case, or whether the Court below erred by exceeding its jurisdiction, or otherwise. The appellants' position is really a request for this court to pass on the merits of the case when the case is not one within its appellate jurisdiction.

II.

The appellants show no ground on the merits of the case calling for the interposition of this court.

In support of their motion for a certiorari the appellants rely on alleged gross errors committed by the Circuit Court and the Circuit Court of Appeals. In support of this charge they aver :

(1) That the foreclosure was for the benefit of 90 bonds only out of 130, and that the holders of the remaining 40 bonds were excluded from its benefits.

(2) That the holders of the 40 bonds referred to were necessary parties to the suit.

(3) That the court erred in that the Circuit Court for the Northern District of Georgia ordered the sale of land in Alabama.

(4) That the Circuit Court disobeyed the mandate from the Circuit Court of Appeals made upon a former appeal in the case. (Appellants' brief, pp. 44 *et seq.*)

None of these allegations are well founded.

1. None of the bonds secured by the mortgage were excluded from the benefit of the decree.

The appellants allege (Brief, p. 92) that " Forty of the bonds, aggregating $20,000 in amount, secured by the

mortgage in this case were excluded from benefits by the decrees in the case that were secured to the others." It appears from the decree of foreclosure entered March 30, 1895 (Record, pp. 6 *et seq.*) that prior to the institution of the suit default was made in the payment of interest on 90 out of the 130 bonds secured by the mortgage, and that such default had continued for more than six months, giving these bondholders a right, of which they availed themselves, to declare the principal of their bonds payable. The court thereupon ordered that unless the mortgagor should pay the amount so in default within thirty days there should be a sale of the property.

Obviously any bondholder upon whose bond a default was made was entitled to have the security of the mortgage enforced for his benefit. Upon a default by which $45,000 out of the entire principal of $65,000 had become due with interest, the holders of these matured bonds were entitled to have immediate steps taken to compel the mortgagor to make good the default, or else to have satisfaction out of the security. Clearly they were not compelled to wait until default had been made on all the bonds and all had become due.

The appropriate method of enforcing the security was by proceedings for foreclosure, and the trustees of the mortgage were obviously bound, for the protection of these bondholders, to take proceedings to foreclose. On any other view, the continued payment of interest on a single bond, thus preventing the entire mortgage debt from becoming immediately payable, would deprive the holders of all the other bonds of any remedy under the mortgage.

The decree of March 30, 1895, directing a foreclosure

by sale if the default was not made good within thirty days, fully recognized the rights of those bondholders whose indebtedness had not matured. It provided in Section 11 (Record, p. 11) that in case of sale the proceeds should be brought into court, and the bonds which had not matured at the time of the filing of the bill "are hereby entitled to share in the proceeds of said sale on distribution in amounts according to the findings of the special master, with all accruing interest, and the holders and owners of said bonds may present them with coupons attached for their proper pro rata share of said proceeds according to their tenor and effect."

Under the provisions of the decree just quoted, no bondholder could, except by his own act, be debarred from receiving his proportionate share of the common security, whether the indebtedness on his bond had matured or not.

No departure from this rule was made at any time throughout the proceedings. The appellants have not in their brief undertaken to make any specification of their charge that the so-called minority bondholders were not given the full benefits of the sale equally with the majority. They appear to rely (Brief, p. 97) on the fact that when the sale was finally confirmed on June 4, 1898, the amount of rents and profits for which the appellees were chargeable was ordered to be applied directly in reduction of the mortgage indebtedness, and it seems to be thought that this operated as a discrimination in favor of such of the bondholders as might have been interested in the first purchase of the property under which possession was held for the period during which the rents and profits in question were charged. Obviously, however, the purchaser at the second sale could not properly be required,

as a part of his purchase, to pay this sum of rents and profits into court in cash in addition to the balance of the purchase price of $66.000 for which the property was sold to him. And even if the amount of the rents and profits should have been applied wholly upon that part of the mortgage indebtedness represented by the majority bondholders who were interested in the first purchase, no injury was done to the minority bondholders, since the sum of $43,433.36 cash which was paid into court was in excess of the amount chargeable for rents and profits, so that upon the distribution of this sum the minority bondholders could fully protect their rights.

2. None of the bondholders were necessary parties to the suit.

It has been repeatedly laid down in the decisions of this court that the holders of bonds secured by a mortgage given to a trustee are not individually necessary parties to proceedings to foreclose the mortgage or other proceedings relating to the trust property, although cases may arise in which it is proper to admit individual bondholders, or representatives of classes of bondholders, as parties.

Kerrison v. *Stewart*, 93 U.S. 155.
Richter v. *Jerome*, 123 U.S. 233.
Beals v. *Illinois, Missouri, & Texas R.R. Co.*, 133 U.S. 290.

If in such a case a portion of the beneficiaries are aggrieved by the action of the trustee, they would undoubt-

edly, upon a proper representation to the court, be permitted to intervene in the suit.

Toler v. *E. Tenn. V. & G. Ry.*, 67 F.R. 168.

And if in such a case there is diversity of interest or opinion among the bondholders, it is proper to allow such an intervention.

Farmers' Loan & Tr. Co. v. *Cape Fear & Y. V. Ry. Co.*, 71 F. R. 38.

The remedy of bondholders who have not intervened, however, if they deem themselves aggrieved by the action of the trustee, is by an independent suit asking relief against such action.

In *Richter* v. *Jerome*, 123 U.S. 233, a minority of bondholders secured by a trust deed complained that the mortgage had been foreclosed in the interest of the majority bondholders who had conspired to secure the property for their own benefit at a depressed price. This Court said: "If the decree or the sale under it was in fraud of the rights of the bondholders, their remedy is by a direct proceeding to set aside the sale or the decree and to proceed anew with another foreclosure of the mortgage, and not undertake to reforeclose what had been fully foreclosed before under a decree which remains in force." 123 U.S. 247.

In the present case it does not appear, and is not suggested in the appellants' brief, that any bondholder has ever sought to intervene in the proceedings. It does not even appear that there is any bondholder now dissatisfied with the course of the litigation. Certainly the appellants

representing only the interests of the mortgagor are not interested in the rights of the bondholders among themselves, and cannot impeach the decree on the ground that it does injustice to certain creditors who are unquestionably bound by the decree as against the appellants, and have not themselves seen fit to intervene.

3. The Circuit Court for the Northern District of Georgia had jurisdiction to sell that part of the property situated in Alabama.

It is the settled law of this court that a mortgage given to a trustee to secure bonds covering property situated in different States can be foreclosed as to the whole in a Circuit Court sitting in one of the States, if that court has jurisdiction of all the parties interested.

Muller v. *Dows*, 94 U.S. 444.

The decision in the case just cited has never been doubted, and has repeatedly been acted upon, in cases involving properties of great magnitude situated in numerous different jurisdictions.

In the present case all the parties interested were within the jurisdiction of the court, and were brought before it by its process. The original mortgagor, the Alabama and Georgia Manufacturing Company, and the owner for the time being of the equity of redemption, the Huguley Manufacturing Company, as well as all the surviving trustees of the mortgage, were parties to the proceedings. It was, therefore, under the decision of this Court above cited, within the jurisdiction of the Circuit Court for the Northern District of Georgia, to direct the sale by its

special commissioner of all the property covered by the mortgage.

The appellants in their brief have failed to refer to the decision of this court in *Muller* v. *Dows*. The numerous cases which they have cited relating to sales on execution and similar judicial sales have no application to a case like the present. Courts of law have not the power vested in courts of equity to act *in personam*. Unless the sheriff or marshal to whom an execution is delivered can take the property physically, he cannot under his writ sell it. But a court which by its order can compel whatever conveyances are required to perfect the title can enforce its decree even outside of its territorial jurisdiction.

4. The Circuit Court did not disobey the mandate of the Circuit Court of Appeals.

It is difficult to understand either the meaning or the scope of this objection raised by the appellants. The only mandate of the Circuit Court of Appeals to which they appear to refer, and the only one in the printed record, is that rendered on March 10, 1896, which merely affirmed the decree of the Circuit Court entered on March 30, 1895. Such affirmance gave no added sanctity to the form of the decree from which the appeal had been taken. The subsequent proceedings of the Court under that decree were as much within its power as if no appeal had been taken. If the Circuit Court had desired to modify that decree, it would have had the same right to do so as if no appeal had been taken.

There was not in fact, however, any departure from

the terms of the decree of March 30, 1895, in the subsequent proceedings of the court, nor any inconsistency between that decree and those subsequently entered.

The decree of March 30, 1895 (Record, p. 6), ordered a sale of the property covered by the mortgage in default of the payment within thirty days of the matured debt. The decree provided that in case the holders of any of the bonds should purchase at the sale, they should "be entitled" to pay in bonds, but the decree did not require payment in bonds, and reserved the right to make other decrees in reference to entries of credit on the bonds, and other decrees in conformity to the general scope of that decree. This decree was affirmed by the Circuit Court of Appeals. Subsequently to such affirmance, the property was, on May 6, 1896, sold under the decree (Record, p. 19), and this sale was on June 25, 1896 (Record, p. 24), confirmed by the court. The decree of confirmation provided nothing as to the manner of payment.

On February 23, 1898, a decree was entered (Record, p. 46) disposing of exceptions to the report of the master to whom had been referred the question of accounting for rents and profits for the period between the first and second sales of the property. On April 11, 1898 (Record, p. 55), a decree was entered dealing with the application of the appellants that their costs and counsel fees be made a first charge against the rents and profits. On April 26, 1898 (Record, p. 63), the court entered a decree determining how the rents and profits should be applied to the mortgage indebtedness. This decree affirmed the master's report, from which on this point no exception had been taken by the appellants (see Appellants' Exceptions, Record, p. 40). On June 4, 1898 (Record, p. 64), a

further decree was entered directing the method of application of the rents and profits.

None of the decrees referred to related to any matter which was before the Circuit Court of Appeals or had even arisen at the time the mandate above referred to, rendered on March 10, 1896, was sent down. In none of these decrees, therefore, could the Circuit Court be deemed guilty of having disobeyed the mandate.

On October 15, 1898, the court entered a decree for a conveyance to the purchaser. In this decree the court directed that payment be made in cash by the purchaser of the entire balance of his bid, after allowing the amounts already paid into court on the first and second sales. This decree was certainly in no way inconsistent with the decree of March 30, 1895, under which the sale was made. The decree for sale had not attempted to make any exact provision as to the final payment of the purchase money, or to adjust any rights that might exist in respect thereto.

The other provisions of the decree of October 15, 1898, relating to the payment of costs and expenses from the fund in court were clearly within the reservation of Clause 12 of the decree of March 30, 1895 (Record, p. 11).

Perhaps the most satisfactory answer to this objection of the appellants is that the present appeal is taken from a decree of the Circuit Court of Appeals, affirming that action of the Circuit Court, which constituted, according to the appellants, a disobedience of the earlier mandate from the Circuit Court of Appeals. Indeed, the fact that this objection appears to have been taken for the first time in this court is itself enough to defeat it and to show its factitious character.

5. The appellants have shown no injustice resulting from the action of the court below.

The argument filed in behalf of the appellants contains repeated charges of fraud and judicial misconduct in the course of this litigation. These charges are entirely reckless, and unsupported either in fact or in law. The form in which they are made renders it necessary to deal with them separately and at some length.

(*a*) On page 7 of the appellants' brief, Section IV., it is said: "These statements of findings could not have relieved the Appellate Court from its duty of showing by the record, the pleadings, proceedings, and facts in the cause upon which its judgment is based." It is difficult to attach any definite meaning to this statement. It is sufficiently clear that no duty rested upon the Circuit Court of Appeals to show by the record either the pleadings, proceedings, or facts in the cause. The duty of that court was limited to considering the record presented to it and rendering a decree thereon accompanied by such opinion as the member of the court to whom the duty of writing an opinion might be allotted should prepare with the approval of his associates. Neither the decree of the court nor the opinion of the court is required to do more than state its decision and the reasons leading it to that decision.

(*b*) On page 8 of the appellants' brief, they complain that on the appeal to the Circuit Court of Appeals the record of the case in the Circuit Court was not certified to the Circuit Court of Appeals. The appeal in question was taken by the appellants themselves, and it was their duty to see that a proper record was filed in the Circuit

Court of Appeals. They cannot now complain of any injury resulting from their omission to fulfil this duty. In point of fact, however, it appears that the record of all the proceedings in the cause prior to the last appeal to the Circuit Court of Appeals had been duly certified to that court either in the last appeal or in prior appeals in the same case. (Record, p. 5.)

(*c*) The appellants complain on pages 8 and 9 of their brief of the action of the plaintiff Robinson in instituting this suit. They say that it appears as a necessary inference that he as trustee pretended to represent the holders of all of the mortgage bonds, and they appear to assume that unless he acted at the instance of all the bondholders his action was unauthorized. This suggestion is clearly without any foundation. It is the duty of a trustee under a mortgage securing a series of bonds to act for the protection of any of the bondholders as to whom a default has been made. It was not necessary in the original suit that the trustee Robinson should represent, in the sense of acting at the instance of, all the bondholders, and no ground appears for inferring that he "pretended" so to do.

(*d*) The appellants on page 9 of their brief assert that because $20,000 of the bonds secured were not due when the suit was begun, the bill should necessarily have been dismissed unless amended so as to bring in these bondholders as parties. This contention seems to arise from a misconception of the elementary principles governing the relation of the trustee in a mortgage to the several holders of bonds secured thereby. It is, as we have elsewhere shown, the unvarying rule that the individual bondholders are not necessary parties even if the trustee is

acting contrary to their wishes. If they make complaint of his conduct they may on application be admitted as parties. In the present instance there was, so far as appears, absolutely no diversity of interest between the bondholders whose debt had matured through the default and those whose debt had not matured. No attempt was at any time made or suggested to deprive the bondholders whose debt was still unmatured of their proportionate share in the security. Until such an attempt was made, their interests were not threatened, and they might well be content, as they in fact appear to have been, to permit the litigation to proceed without any intervention on their part. Even assuming the correctness of the appellants' contention as to the necessity of making such bondholders parties, the conclusion which they seek to draw that failure to do so raises a question of federal jurisdiction, is unfounded. Failure to join a necessary party would afford a ground of defence for want of parties, but would not raise any question of jurisdiction of the court as a federal court. This plain distinction has already been considered.

(*e*) On page 14 of their brief the appellants charge with great apparent earnestness that the decree of the Circuit Court of March 30, 1895, under which the property was sold, shows on its face a want of jurisdiction, in that it disposed of the rights and securities belonging to the holders of $20,000 of bonds who were "excluded" from any hearing in the cause, and that it undertook to foreclose by sale land situated in Alabama. It is untrue that the holders of any of the bonds were excluded from a hearing in the cause or were not afforded an opportunity to prove their claims. So far as appears, no individual bondholder has at any time sought to be heard, and as by

the decree appealed from the entire fund in court after the payment of certain preferred liens, costs, and expenses is held subject to further order, it is clear that as yet, at least, no bondholder has been deprived of the opportunity to prove his claim. The power of the court to sell land in Alabama has already been fully discussed.

(*f*) The appellants allege on pages 18 and 20 of their brief that the foreclosure sale was improperly made, in that favors were shown to the Galeton Cotton Mills such that no other person could or would buy the property. In support of this alleged discrimination, no fact is alleged. The only respect in which there was any discrimination between bidders at the sale was the provision in clause ninth of the decree (Record, p. 10) that the successful bidder should pay down $10,000, but that if such bidder represented a majority of the bondholders he need pay down only $5,000. The propriety of this distinction is obvious when it is considered that the bondholders were themselves the persons interested in the purchase money. Certainly allowing a representative of the bondholders to pay a smaller deposit than was required of a stranger could not have the effect of preventing strangers from bidding upon the property, if the deposit required of them was reasonable, and no suggestion has been made that a deposit of $10,000 would under the circumstances be so unreasonable as to deter intending purchasers.

(*g*) On pages 19 and 22 and elsewhere in their brief, the appellants have much to say as to the supposed deception practised upon the court in leading it to suppose that the purchaser of the property represented all the bondholders. It does not in fact appear that any such deception was practised or any such representation made. In

support of this charge, the appellants refer to statements in opinions rendered in the Circuit Court and the Circuit Court of Appeals, and to the statement in a petition by the purchaser for confirmation, in which he declared that he was "ready to surrender the bonds of said company in payment of the balance of the purchase money on confirmation of the sale, all of the bonds being legally or equitably the property of your petitioner and his associates and under their control" (Record, p. 20). The inference is drawn (Appellants' brief, p. 36) that this statement was necessarily false, because two and one-half years later it appeared that the petitioner was no longer able to deposit all the bonds. Such an inference is unwarranted.

(*h*) The appellants insist strenuously (although it is not apparent what possible interest these appellants can have in the question) that the proceedings under the decree of sale were unfair, in that the rents and profits for which the Galeton Cotton Mills, the purchaser at the first sale, was found liable, were applied to the payment of the mortgage indebtedness, and, as the appellants charge, thus "swept into the pockets" of the bondholders who owned the Galeton Cotton Mills to the alleged detriment of other bondholders (Appellants' brief, p. 26). This clearly is a matter concerning only the relations between the individual bondholders whose bonds were secured by the mortgage, and does not in any way affect the interests of the mortgagor whose equity was foreclosed by the sale. In point of fact, however, the record shows no ground for criticising this action, or any fact indicating a discrimination against the holders of bonds who were not interested in the Galeton Cotton Mills Company, since by the decree complained of — that of April 11, 1898

(Record, p. 55)—no attempt was made to adjust the relations between the several bondholders.

(*i*) The appellants charge (Brief, p. 29) that there was a violation of the decree of March 30, 1895, because the Circuit Court, when it finally confirmed the sale and directed a conveyance to the purchaser, by its decree of October 15, 1898 (Record, p. 72), directed that the entire balance of the purchase money, after certain deductions, should be paid in cash instead of in bonds. The decree of March 30, 1895, however, provided (Section 10, Record, p. 11) only that the purchaser, if the holder of bonds, should be entitled on confirmation to pay the balance in bonds. Clearly it is no ground of complaint on the part of the appellants, if the purchaser does not object, that the latter was deprived of this privilege. In any event, whether payment was made in one way or in the other, was utterly immaterial to these appellants, who represented the foreclosed equity. That such an objection should be taken with apparent seriousness shows the desperate straits to which the appellants are reduced in their efforts to show errors committed by the courts below.

(*j*) The appellants charge (Brief, p. 33) that an error of $10,087.18 was committed by the court in its decree of June 4, 1898, in computing the amount of interest due on the mortgage debt (Printed record, p. 64). Without going into any computation of what the interest should actually be, it is sufficient to refer to the appellants' own computation of interest (Record, p. 62) made in connection with their application that the rents and profits be applied at an average date earlier than the date of the second sale. This computation shows items of interest on the mortgage debt, although reduced by such inter-

mediate application of the rents and profits, amounting to over $26,000 as against the sum of $20,624.83 alleged in their brief to be the amount properly due. This error of the appellants is probably in part at least accounted for by their omission to observe that the amount of interest stated in the decree of March 30, 1895, was there expressly stated as interest due up to November 1, 1894, only (Section 6, Record, p. 10).

(*k*) The appellants allege (Brief, p. 34) that the sum of $3,391.04 which was found due from the Galeton Cotton Mills to the Huguley Manufacturing Company for property not covered by the mortgage was twice deducted from the amount of rents and profits allowed against the Galeton Cotton Mills. In support of this they refer to the decrees of February 28, 1898 (Record, p. 53), and of June 4, 1898 (Record, p. 64). It appears from an inspection of these decrees that on February 28, 1898, in passing upon the special master's report, the court deducted from the amount which he had allowed against the Galeton Cotton Mills an item of $3,502.52 principal and $353.45 interest for insurance paid by the Galeton Cotton Mills not allowed them by the Master. This reduced the rents and profits for which they were found accountable to $35,857.54, the sum stated by the appellants as that resulting from deducting the sum of $3,391.04, which they assert was twice deducted. In the decree of June 4, 1898 (Record, p. 64), the court did in fact deduct the sum of $3,391.04 from the amount of rents and profits found chargeable to the Galeton Cotton Mills, which was to be credited on the mortgage indebtedness, leaving the amount of such credit $32,466.50. These two deductions which the appellants refer to as of the same amount were

therefore of entirely distinct sums, each standing on its own basis, and each properly deducted.

One radical vice pervades almost the entire argument submitted by the appellants. They seek to inject into a controversy between the mortgagor who has been foreclosed and the mortgagees questions which relate solely to the relations *inter se* of the holders of bonds secured by the mortgage. It in no way affects the rights of these appellants whether a part of the bondholders have been unfairly treated or not. We have endeavored to show above that the record contains nothing to justify the aspersions cast alike upon the trustee, the bondholders who united in the organization of the Galeton Cotton Mills, the judge of the Circuit Court before whom the case has been pending for nearly ten years, and the judges of the Circuit Court of Appeals to whom these appellants have three times taken appeals. But it seems proper to protest against the discussion of questions which relate exclusively to the rights of persons who are not before the court, are not necessary parties to the cause which is before the court, and have not deemed it essential to the protection of their interests to ask to be admitted as parties in order that they might be heard. It is wholly consistent with the record that every holder of bonds secured by the mortgage in question is perfectly satisfied with the proceedings of the trustee and of the court. At every stage in the proceedings, the court has reserved the power to determine the rights of the several bondholders in the distribution of a fund which represents on any theory more than half the proceeds of the fore-

closure. If those rights have been determined, it must certainly be assumed that the bondholders who have stood by without asking leave to intervene do not feel themselves aggrieved, and if those rights have not yet been determined, there is no reason to assume that in their determination the rights of any of the bondholders will be disregarded. The interests of the appellants are certainly inconsistent with the interests of any of the bondholders. So far as appears, the only appellant not interested solely as original mortgagor or owner of the equity of redemption is a trustee who did not at the time the decree for sale was made own any of the bonds (Record, pp. 7 *et seq.*), and had refused to join in enforcing the security upon default being made.

The charge freely made in the appellants' brief (see pages 9, 10, 31, 39, 96) that the foreclosure was part of a scheme unjustly to secure the mortgaged property for the benefit of the Galeton Cotton Mills is not supported by any evidence, while it is clear that this protracted and expensive litigation has resulted wholly from the acts of the debtors in default, who have sought to retain the mortgaged property for their own benefit, and have endeavored by the magnitude of their claims to make up for the smallness of the foundation upon which they are based.

III.

The appellants have shown no ground for granting a certiorari to complete the record.

We agree fully with all that is said in the appellants' brief as to the fatally defective nature of the transcript of record filed in this court, but before granting the appell-

ants' motion for a writ of *certiorari* to complete that transcript, the court should be satisfied that some advantage will be gained by such a course, and that there is some sufficient reason for the delay in making the application.

We have already endeavored to show that on the appellants' own statement, the only effect of completing the record will be that the appeal must be dismissed for want of jurisdiction. If the omitted parts of the record are not such, and it is plain from the appellants' statement that this is the fact, as to bring the case within the appellate jurisdiction of this court, the granting of the writ will be entirely futile, and this court will not exercise its discretion for such a purpose.

There can be no question of the validity of the decree of the Circuit Court of Appeals from which the present appeal was taken. The clerical mistake of the clerk in marking certain papers with the docket number "789" and others with the docket number "798" is not substantial, since the identity of the causes is established by the clerk's certificate that all of the papers are comprised in the record of the case in which the appeal is taken. The Circuit Court of Appeals had full authority to act on such a record as it and the parties before it deemed sufficient. The difficulty into which the appellants have fallen is that they neglected to have the transcript of the record sent from the Circuit Court of Appeals to this court completed. In the lower court the record was complete by reference to other papers which were themselves a part of the records of that court, having been brought there on earlier appeals in the same cause. In this court the papers constituting the records

on these former appeals were equally necessary, but were not made a part of the transcript. The defects in the record, therefore, cannot on any theory affect the decree from which the appeal was taken, and no action of this court is necessary to make that decree valid.

The appellants have offered no explanation of their delay in applying for this writ of *certiorari*. A most cursory inspection of the record would have sufficed to show its incompleteness, yet after the appellants filed the transcript on June 25, 1900, no step was taken to complete it until this motion was filed, on September 28, 1901, a lapse of fifteen months and the passage of an entire term of court.

LOUIS D. BRANDEIS,
WILLIAM H. DUNBAR,
Counsel for Appellees.

Supreme Court of the United States.

No. 94.—October Term, 1901.

The Huguley Manufacturing Company, Appellants, *vs.* The Galeton Cotton Mills et al. } Appeal from the United States Circuit Court of Appeals for the Fifth Circuit.

[February 24, 1902.]

This was a bill filed in the United States Circuit Court for the Northern District of Georgia, January 21, 1891, by J. J. Robinson as trustee, who averred that he was "a citizen of and resided in the State of Alabama," "against the Alabama and Georgia Manufacturing Company, a corporation created under and by virtue of the laws of the State of Georgia and a resident and citizen of said Northern District of Georgia; and against the Huguley Manufacturing Company, a corporation created under the laws of said State of Georgia, and a resident and citizen of said State of Georgia and of the Northern District of said State; and against W. T. Huguley, who your orator avers to be a citizen of said State of Georgia and residing within the said Northern District of Georgia."

The bill averred that on January 2, 1884, "the said Alabama and Georgia Manufacturing Company executed and delivered to said W. T. Huguley, W. C. Yancey, and your orator, as trustees, a certain deed of trust, conveying to said persons named, and to orator, all the property of the said Alabama and Georgia Manufacturing Company upon the terms and upon the trusts therein stated for the purpose of securing certain negotiable bonds of said company in the principal sum of sixty-five thousand dollars, and interest thereon, which deed of trust was accepted by said trustees and duly recorded." A copy of the trust deed was attached and conveyed certain real estate in the State of Georgia and certain real estate in the State of Alabama as therein described.

It was further averred that the bonds were duly issued by the Alabama and Georgia Manufacturing Company and sold or otherwise disposed of; that the company was insolvent and had ceased to do business; that under and by virtue of a decree in chancery of the Superior Court of Troup County, Georgia, all the property of the manufacturing company covered by the deed of trust had been sold and purchased by certain persons who afterwards conveyed the same to the Huguley Manufacturing Company, and that the last-named corporation was now in the possession of the same; that the sale was made subject in all respects to the

rights and lien of the trust deed for the holders of the first mortgage bonds; that W. T. Huguley, defendant herein, and named as one of the trustees for said bondholders, was interested in the purchase of said property, and in the property and assets of the Huguley Manufacturing Company, and adversely to complainant as trustee for said bondholders, and that the other trustee, W. C. Yancey, had departed this life since the execution and delivery of the deed of trust.

The bill then set up default on the part of the Alabama and Georgia Manufacturing Company in the payment of interest; the election of a majority of the bondholders to treat the whole of the principal sum named in the bonds as due; request of complainant to begin proceedings to secure the property pledged for the payment of the indebtedness, and which he deemed to "the best interest of the bondholders;" and prayed for an accounting, foreclosure, and sale of the property.

Defendants acknowledged service, and the two defendant companies filed a demurrer to the bill, which was subsequently overruled on hearing, Mr. Justice Lamar presiding. 48 Fed. Rep. 12. Answer was filed by these defendants and the bill taken as confessed as to W. P. Huguley. The cause subsequently went to final decree adjudging recovery on all the bonds and of foreclosure and sale, which decree was afterwards reversed by the Circuit Court of Appeals for the Fifth Circuit, 56 Fed. Rep. 690, because all the bonds were not due, acceptance of interest on some of them having waived default, and the cause remanded. Pending the appeal the property was purchased for the bondholders under the decree and $10,000 paid into court by the purchasers as required by the decree, who organized a company under the name of the Galeton Cotton Mills, which corporation was placed in possession of the property and remained in such possession for a period of three years and six months. The decree of foreclosure having been vacated, the Circuit Court granted a petition on behalf of the Huguley Manufacturing Company to restore it to the possession of the property, on condition however that it pay into court the $10,000 which had been paid in by the purchasers. The Huguley Manufacturing Company did not comply with this condition, and a second decree of foreclosure was entered adjudging that, out of a total of one hundred and thirty bonds, ninety were due when the bill was filed, and forty were not then due because of waiver of default, though now due; that the property was indivisible and could not be sold to satisfy part of the bonds only; and that the proceeds of sale should be proportionately distributed on all the bonds. Thereupon an appeal was taken to the Circuit Court of Appeals, and the decree of the Circuit Court was affirmed. 72 Fed. Rep. 708.

A second foreclosure sale took place and the property was again purchased for the bondholders, and this sale was confirmed June 25, 1896.

Defendants filed a petition for an accounting of the rents and profits from the time of the first sale, and an amendment thereto, and a reference was made to a special master, who on November 2, 1897, filed his report in which he found the Galeton Cotton Mills liable for rents and profits in the sum of $39,715.31. Exceptions were filed to the master's report by both parties. February 23, 1898, the exceptions of appellants were overruled and the exceptions of appellees sustained to the extent of reducing the master's finding to $35,857.54, and a decree to that effect was entered February 28, 1898. Thereafter the Circuit Court entered a decree that the rents and profits should be used in reduction of the mortgage debt, and later a decree fixing the amount of the mortgage debt and costs and directing the manner of applying thereto the rents and profits and the amount of cash already received and reserving all questions of costs and expenses not therein disposed of. 89 Fed. Rep. 218. At the last foreclosure sale a balance was left due on the trust deed of $33,414.21. September 22, 1898, the purchaser at the second sale petitioned for a final conveyance, and on October 15, 1898, a decree was entered directing the completion of the sale by a cash payment, and conveyance. A motion was made to set aside this decree, which was overruled, whereupon an appeal was taken to the Circuit Court of Appeals. The appeal was heard, and the decree of the Circuit Court was on May 16, 1899, affirmed. 94 Fed. Rep. 269. Application was made to this court for a certiorari, which was denied October 30, 1899. 175 U. S. 726. May 12, 1900, an appeal to this court was allowed by Pardee, J., in order to preserve any possible rights of the applicants, although he expressly stated that he seriously doubted the right of appeal. Appellees moved to dismiss the appeal, the consideration of which motion was postponed to the hearing on the merits.

Mr. Chief Justice FULLER delivered the opinion of the Court:

The act of March 3, 1891, c. 517, 26 Stat. 826, provides in section 6 that the Circuit Courts of Appeals shall have appellate jurisdiction to review judgments and decrees of the Circuit Courts in all cases in which a direct appeal is not allowed by section 5 to this court, and that the judgments and decrees of the Circuit Courts of Appeals shall be final in all cases in which the jurisdiction is dependent entirely on diversity of citizenship.

The jurisdiction referred to is the jurisdiction of the Circuit Court as originally invoked. *Mining Company* v. *Turck*, 150 U. S. 138; *Press Company* v. *Monroe*, 164 U. S. 105; *Ex parte Jones*, 164 U. S. 691; *American Sugar Refining Company* v. *New Orleans*, 181 U. S. 277; *Arkansas* v. *Kansas & Texas Coal Company*, 183 U. S. 185.

If after the jurisdiction of the Circuit Court attaches on the ground of diversity of citizenship, issues are raised, the decision of which brings the case within either of the classes set forth in section five, then the case may be brought directly to this court; although it may be carried to the Circuit Court of Appeals, in which event the final judgment of that court could not be brought here as of right. *Loeb* v. *Trustees*, 179 U. S. 472. If the jurisdiction of the Circuit Court rests solely on the ground that the suit arises under the Constitution, laws or treaties of the United States, then the jurisdiction of this court is exclusive, but if it is placed on diverse citizenship, and also on grounds independent of that, then if carried to the Court of Appeals, the decision of that court would not be made final, and appeal or writ of error would lie. *American Sugar Company* v. *New Orleans*, 181 U. S. 277.

The general intention of the act was to distribute the appellate jurisdiction and to permit an appeal to only one court. *Robinson* v. *Caldwell*, 165 U. S. 359.

In this case appellants did not attempt to take an appeal directly to this court from the Circuit Court, nor could they have done so since no question was so raised as to bring the case within either of the classes named in section 5. *Cornell* v. *Green*, 163 U. S. 75. The ground on which the jurisdiction of the Circuit Court was invoked was solely diversity of citizenship, and the record does not show anything to the contrary, so that the decree of the Circuit Court of Appeals cannot be regarded otherwise than as made final by the statute.

The question before us is whether this appeal was properly granted and can be maintained. In all cases where the decree or judgment of the Circuit Court of Appeals is made final by the statute, an appeal does not lie, but any such case may be brought here "by certiorari or otherwise." The latter words add nothing to our power, for if some other order or writ might be resorted to, it would be *ejusdem generis* with certiorari. The writ is the equivalent of an appeal or writ of error as declared by the statute, and it is issued in the discretion of the court.

The record filed in this case June 25, 1900, was entirely insufficient, and appellants applied for certiorari to perfect it by bringing up the alleged lacking portions. We granted that application, and the omissions were supplied. This auxiliary writ did not operate to bring the case before us or in itself to add any support to the appeal, which must stand or fall according as the statute did or did not allow it to be taken. Many matters are urged, such as alleged lack of indispensable parties below and so on, as reasons why an appeal ought to lie, but our jurisdiction depends on the statute and cannot be enlarged by the supposed hardship of particular cases. Finally, it is argued that a large part of the property dealt with by the decree is situated in the State of Alabama and it is said that

therefore the decrees of both courts are void for want of jurisdiction over the subject matter.

As the Circuit Court had jurisdiction over the mortgagor company, the company claiming under it, and the surviving co-trustee of complainant, and the trust deed was made and executed in Georgia, where part of the property was situated, the courts below may have assumed that the case came within *Muller* v. *Dows*, 94 U. S. 444; *International Bridge Company* v. *Holland*, 52 U. S. App. 240; and kindred cases.

But we need not discuss the validity of the decrees in this regard. If the point had been raised in the Circuit Court and its decision would have justified an appeal directly to this court, no such appeal was taken. If its existence in the record justified a review of the decree of the Circuit Court of Appeals, the proper course was to apply for a certiorari. That course was taken in this case, and the application was denied. In view of repeated and well considered decisions of this court, some of which we have cited, we are unable to find any ground on which this appeal can be sustained.

Appeal dismissed.

True copy.

Test:

Clerk Supreme Court, U. S.